

Exhibit 2

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UNITED STATES BANKRUPTCY COURT

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SOUTHERN DISTRICT OF NEW YORK

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In Re:

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Chapter 11

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LEHMAN BROTHERS

Case No. 08-13555(JMP)

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HOLDINGS, INC., et al.,

(Jointly Administered)

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Debtors.

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PARTIALLY HIGHLY CONFIDENTIAL

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VIDEOTAPED DEPOSITION OF DANIEL McISAAC

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New York, New York

15

April 6, 2010

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* * *(Pages 12-23 have been designated highly

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confidential.)* * *

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Reported by:

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KATHY S. KLEPFER, RMR, RPR, CRR, CLR

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JOB NO. 29428

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<p>1 2 April 6, 2010 3 4 VIDEOTAPED deposition of DANIEL 5 McISAAC, held at offices of Boies 6 Schiller & Flexner, LLP, 575 Lexington 7 Avenue, New York, New York, before Kathy S. 8 Klepfer, a Registered Professional 9 Reporter, Registered Merit Reporter, 10 Certified Realtime Reporter, Certified 11 Livenote Reporter, and Notary Public 12 of the State of New York. 13 14 15 16 17 18 19 20 21 22 23 24 25</p>	<p>1 2 3 A P P E A R A N C E S: 4 5 JONES DAY, LLP 6 Attorneys for Lehman Brothers, Inc. 7 222 East 41st Street 8 New York, New York 10017 9 BY: BART GREEN, ESQ. 10 11 BOIES, SCHILLER & FLEXNER, LLP 12 Attorneys for Barclays 13 10 North Pearl Street 14 Albany, New York 12207 15 BY: TRICIA J. BLOOMER, ESQ. 16 AMY L. NEUHARDT, ESQ. 17 LOUIS SMITH, ESQ. 18 HEATHER KING, ESQ. 19 - AND - 20 CLEARY GOTTlieb STEEN & HAMILTON LLP 21 Attorneys for Barclays 22 One Liberty Plaza 23 New York, New York 10006 24 BY: DAVID AMAN, ESQ. 25</p>
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<p>1 2 A P P E A R A N C E S: (Cont'd.) 3 4 QUINN, EMANUEL, URQUHART, OLIVER & HEDGES, LLP 5 Attorneys for the Creditors Committee 6 51 Madison Avenue 7 22nd Floor 8 New York, New York 10010 9 BY: ERIC M. KAY, ESQ. 10 11 HUGHES, HUBBARD & REED, LLP 12 Attorneys for the SIPA Trustee 13 One Battery Park Plaza 14 New York, New York 10004 15 BY: NEIL J. OXFORD, ESQ. 16 AMINA HASSAN, ESQ. 17 FARA TABATABAI, ESQ. 18 19 20 21 22 23 24 25</p>	<p>1 D. McIsaac 2 THE VIDEOGRAPHER: This is the start 3 of the tape labeled number 1 of the 4 videotaped deposition of Daniel McIsaac in 5 the matter In re: Lehman. Today is April 6 6, 2010. The time is approximately 9:37. 7 My name is Michael Pineiro from TSG 8 Reporting, Inc. and I'm the legal video 9 specialist. The court reporter is Kathy 10 Klepfer, in association with TSG Reporting. 11 Will the court reporter please swear 12 in the witness. 13 * * * 14 DANIEL McISAAC, called as a 15 witness, having been duly sworn by a Notary 16 Public, was examined and testified as 17 follows: 18 EXAMINATION BY 19 MS. BLOOMER: 20 Q. Good morning, Mr. McIsaac. 21 A. Good morning. 22 Q. My name is Tricia Bloomer. I'm with 23 Boies, Schiller & Flexner and we represent 24 Barclays Capital in this matter. 25 A. Uh-huh.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Have you ever been deposed before?</p> <p>3 A. No, I have not.</p> <p>4 Q. Okay. Just to go over a few kind of</p> <p>5 ground rules that will help the day go a little</p> <p>6 bit more smoothly. I'll try to ask my questions</p> <p>7 clearly, and if you could allow me to finish a</p> <p>8 question before you begin your answer, and I'll</p> <p>9 try to do the same for you so that Kathy can</p> <p>10 take down everything that we say more easily.</p> <p>11 A. Okay.</p> <p>12 Q. If you can answer with verbal</p> <p>13 responses as opposed to, you know, nods or</p> <p>14 anything like that, that will help things.</p> <p>15 A. As opposed to (nods)--</p> <p>16 Q. And if you need a break at any point,</p> <p>17 please let me know and I'll try to accommodate</p> <p>18 you as soon as we can wrap up whatever topic</p> <p>19 we're on. Okay?</p> <p>20 If you don't understand any of my</p> <p>21 questions, please let me know and I'm happy to</p> <p>22 try to rephrase it for you.</p> <p>23 Okay. I'm going to show you the first</p> <p>24 exhibit, 684.</p> <p>25 (Exhibit 684, Expert Report of Daniel</p>	<p>1 D. McIsaac</p> <p>2 McIsaac, marked for identification, as of</p> <p>3 this date.)</p> <p>4 Q. Exhibit 684 is a copy of the expert</p> <p>5 report that you submitted on exchange-traded</p> <p>6 derivatives issues; is that right?</p> <p>7 A. Yes, it is.</p> <p>8 Q. Okay. Do you have any opinions that</p> <p>9 you didn't express in this report that relate to</p> <p>10 the issues --</p> <p>11 A. No, I don't believe so.</p> <p>12 Q. -- on exchange-traded derivatives?</p> <p>13 Okay.</p> <p>14 And what did you do today to prepare</p> <p>15 for your deposition?</p> <p>16 A. I reread my reports, I spoke to the</p> <p>17 trustees, and did have a slight conversation</p> <p>18 with the financial advisors for the Trustee.</p> <p>19 Q. Okay. And what financial advisors?</p> <p>20 A. Deloitte.</p> <p>21 Q. Okay. Anyone else that you spoke with</p> <p>22 in preparation?</p> <p>23 A. No.</p> <p>24 Q. Okay. Did you review any documents in</p> <p>25 preparation other than your report?</p>
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<p>1 D. McIsaac</p> <p>2 A. The reports and some of the</p> <p>3 information that I would have relied on for my</p> <p>4 reports.</p> <p>5 Q. Do you remember any of the specific</p> <p>6 documents that you reviewed?</p> <p>7 A. I just glanced at everything that was</p> <p>8 there or looked at whatever was in my reliance</p> <p>9 material, would have been affidavits and the</p> <p>10 like in his report.</p> <p>11 Q. Okay. When were you retained by the</p> <p>12 Trustee's counsel to provide expert testimony</p> <p>13 concerning exchange-traded derivatives issues?</p> <p>14 A. Sometime in February, I believe.</p> <p>15 Q. In February. Do you remember whether</p> <p>16 it was -- so February would have been after Mr.</p> <p>17 Leitner submitted his expert report; is that</p> <p>18 correct, to your knowledge?</p> <p>19 A. I think it was, yes.</p> <p>20 Q. Okay. Can you describe generally for</p> <p>21 me what your background is that qualifies you to</p> <p>22 give expert testimony on exchange-traded</p> <p>23 derivatives issues?</p> <p>24 A. I was responsible for the preparation</p> <p>25 of seg and secured reports for the</p>	<p>1 D. McIsaac</p> <p>2 exchange-traded futures for approximately 20</p> <p>3 years. I worked closely with the regulators,</p> <p>4 the FTC, CME, on the issues regarding that, as</p> <p>5 well as the SEC on issues regarding the futures</p> <p>6 business.</p> <p>7 I did some reviews of acquisitions</p> <p>8 that one of my firms worked for -- that I worked</p> <p>9 for did as far as futures-related. As far as</p> <p>10 options, I was responsible for the preparation</p> <p>11 of the reserve formula for 15c3 for</p> <p>12 approximately 20 years, worked closely with our</p> <p>13 people in the areas regarding margin</p> <p>14 requirements at the OCC as they relate to the</p> <p>15 firm and the impact on the firm's calculations,</p> <p>16 and was the liaison for my firms with the</p> <p>17 regulators, both the OCC, CME, SEC, on all</p> <p>18 financial matters.</p> <p>19 Q. Okay. The first thing that you</p> <p>20 mentioned was segregated and secured reports.</p> <p>21 Can you describe those reports?</p> <p>22 A. Yes, that's the customer protection</p> <p>23 portion of the futures rules, CFTC, and it</p> <p>24 basically requires you or requires the firm to</p> <p>25 maintain all the customers' assets in a secure</p>

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<p>1 D. McIsaac</p> <p>2 place with no liens on them.</p> <p>3 Calculation is done every day. You</p> <p>4 start out by reviewing what the -- you owe the</p> <p>5 customers, your liabilities to the customers,</p> <p>6 and then determine where the assets are. And</p> <p>7 you do a report every day and make sure you're</p> <p>8 in compliance with the rules.</p> <p>9 Q. Okay. Is that similar to the reports</p> <p>10 that are required under the SEC's rules?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 A. Similar in some respects because</p> <p>13 they're both required to protect customers.</p> <p>14 Different from the fact that, futures world, all</p> <p>15 of the assets that the customers give you should</p> <p>16 be locked up from day one. They're supposed to</p> <p>17 be sent into a seg. account and kept in</p> <p>18 segregation at all times.</p> <p>19 The reserve requirement requires you</p> <p>20 to do a calculation Mondays as of Friday based</p> <p>21 on information that as of the close of business</p> <p>22 Friday. So there is a difference in the way</p> <p>23 it's done, but it has the same basic qualities</p> <p>24 attached.</p> <p>25 Q. Okay. You mentioned that you worked</p>	<p>1 D. McIsaac</p> <p>2 on reviews of acquisitions?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Can you -- and you said that was</p> <p>5 futures-related acquisitions, I believe?</p> <p>6 A. Yes.</p> <p>7 (Pages 12 through 22 have been</p> <p>8 designated highly confidential and will</p> <p>9 continue on the next page.)</p>
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<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 Q. Can you describe how many acquisitions</p> <p>3 did you review?</p> <p>4 A. When I was at we acquired the</p> <p>5 futures and options business of .</p> <p>6 MR. OXFORD: And Trish, if I can just</p> <p>7 note for the record that, given some</p> <p>8 confidentiality concerns about this</p> <p>9 information, we would like for the moment to</p> <p>10 designate this section of the testimony as</p> <p>11 highly confidential.</p> <p>12 MS. BLOOMER: Absolutely.</p> <p>13 A. Just not sure what -- what's public</p> <p>14 knowledge, what's not public knowledge.</p> <p>15 Q. Fair enough. Sure.</p> <p>16 So, I'm sorry, I --</p> <p>17 A. We acquired the --</p> <p>18 futures business from . [REDACTED] futures</p> <p>19 business. I worked on the due diligence. I</p> <p>20 worked on the preparation of our bid, although I</p> <p>21 didn't work on the financial information, more</p> <p>22 of a review, quick review of the aspects of it,</p> <p>23 how it would have impacted our firm. Worked on</p> <p>24 the due diligence, supervised the due diligence</p> <p>25 in some respects of our financial professionals.</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 Q. Uh-huh.</p> <p>3 A. And was responsible for the worldwide</p> <p>4 implementation from the finance standpoint of</p> <p>5 bringing them onto our books and records.</p> <p>6 Q. When did this transaction take place?</p> <p>7 A. Dates are fuzzy. 2006, I believe.</p> <p>8 Maybe 2005.</p> <p>9 Q. Okay. Were there any other</p> <p>10 transactions that you -- or, acquisitions that</p> <p>11 you reviewed?</p> <p>12 A. We also at one point in time bought</p> <p>13 the prime broker business of [REDACTED] also,</p> <p>14 which included, you know, the options business</p> <p>15 that they did for their customers, but it was</p> <p>16 primarily a purchase of the customer business.</p> <p>17 Q. Did it include proprietary options?</p> <p>18 A. No. No sense in buying proprietary</p> <p>19 options. You book your own.</p> <p>20 Q. Any other transactions that you were</p> <p>21 involved in reviewing?</p> <p>22 A. We also bought -- this goes a little</p> <p>23 bit further back, a little bit more fuzzy on</p> <p>24 it -- the capital markets business of</p> <p>25 [REDACTED] which included their market-making</p>

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<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 business in -- in equities and, in some</p> <p>3 respects, options.</p> <p>4 Q. And that would have been an</p> <p>5 acquisition of the proprietary portfolio as</p> <p>6 opposed to a customer?</p> <p>7 A. It would have been an actual entity as</p> <p>8 well as certain businesses that were bought into</p> <p>9 a different entity. We bought a whole entity</p> <p>10 that did some business as a clearer for some</p> <p>11 prime brokers as well as trading for them,</p> <p>12 market-making for them, and we bought in some</p> <p>13 market-making information into the firm</p> <p>14 separately.</p> <p>15 Q. Okay. Why is it that in that context</p> <p>16 it made sense to buy proprietary positions</p> <p>17 whereas it wouldn't make sense to buy them in</p> <p>18 the case of the prime brokerage acquisitions?</p> <p>19 A. We bought a whole entity.</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 If you could just slow down a little a</p> <p>22 little bit to make sure that Trish gets her</p> <p>23 question finished before you answer and so</p> <p>24 that I have an opportunity to object.</p> <p>25 THE WITNESS: Sorry about that.</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 We bought a whole entity at the time.</p> <p>3 Q. Which time?</p> <p>4 A. With [REDACTED] So the</p> <p>5 entity had proprietary -- might have had options</p> <p>6 positions in it when we bought it.</p> <p>7 Q. Okay. Do you know whether it had</p> <p>8 options positions?</p> <p>9 A. I don't remember if it did or not at</p> <p>10 this point in time. It wouldn't have been a</p> <p>11 significant portion of it.</p> <p>12 Q. Do you remember the terms of the</p> <p>13 acquisition of the proprietary book?</p> <p>14 A. We bought the entity at a price, at a</p> <p>15 bid price, and whatever the net asset value of</p> <p>16 the entity would have been.</p> <p>17 Q. What year was the [REDACTED]</p> <p>18 transaction?</p> <p>19 A. Maybe 2004, 2005.</p> <p>20 Q. And the acquisition of the prime</p> <p>21 brokerage business of ?</p> <p>22 A. I want to say around 2003, 2004,</p> <p>23 somewhere around there.</p> <p>24 Q. With respect to the [R] acquisition of</p> <p>25 [REDACTED] in 2006, the first one that you</p>
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<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 testified about?</p> <p>3 A. Uh-huh.</p> <p>4 Q. How long did it take to negotiate that</p> <p>5 deal from the day it was first conceived to the</p> <p>6 day it closed?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. It probably took a couple of months.</p> <p>9 I don't remember exactly.</p> <p>10 Q. And you said that you were involved in</p> <p>11 the due diligence on that transaction?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Can you describe for me what</p> <p>14 the due diligence consisted of?</p> <p>15 A. We reviewed the financial information</p> <p>16 of their business, reviewed their models. I</p> <p>17 didn't review the models per se to determine the</p> <p>18 revenue streams. That was done by other groups.</p> <p>19 I reviewed from a financial standpoint</p> <p>20 and from a regulatory standpoint for both the</p> <p>21 assets we were buying from one entity as well as</p> <p>22 multiple other entities we were buying, I think</p> <p>23 I want to say 13 or 14 different assets and/or</p> <p>24 entities at -- purchased assets from different</p> <p>25 companies and/or entities and reviewed that and</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 directed our professionals that did a little bit</p> <p>3 deeper dive on due diligence.</p> <p>4 Q. Can you give me a sense of the</p> <p>5 relative size of the business that was acquired</p> <p>6 relative to the LBI transaction that you're</p> <p>7 testifying about in this case?</p> <p>8 A. Well, at the time of the acquisition,</p> <p>9 I believe [R] , with what [R] had at the time,</p> <p>10 made us probably [REDACTED] in the country.</p> <p>11 Q. Okay. And in 2008 where did Lehman</p> <p>12 Brothers' business rank?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I don't know exactly where it was. I</p> <p>15 don't, looking at the numbers, I don't think it</p> <p>16 was very high.</p> <p>17 Q. You don't think it was very high.</p> <p>18 Okay.</p> <p>19 A. As far as, you know, seg and secured</p> <p>20 accounts. Seg and secured balances, that's how</p> <p>21 you usually rate it.</p> <p>22 Q. Other than reviewing models, what else</p> <p>23 did your due diligence consist of?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 Misstates his testimony.</p>

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<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 You can answer.</p> <p>3 A. I didn't review the models. Somebody</p> <p>4 else reviewed the models. I reviewed the</p> <p>5 financial information, the regulatory aspects,</p> <p>6 the impact that it would have on the firm, the</p> <p>7 controls, the system they were using, they were</p> <p>8 using a different system, to make sure we were</p> <p>9 familiar with it.</p> <p>10 Q. Did you review the accounts, the</p> <p>11 customer accounts of the companies you were</p> <p>12 acquired?</p> <p>13 A. No, the businesspeople along with some</p> <p>14 of their professionals reviewed the actual</p> <p>15 customer accounts to determine which customers</p> <p>16 they may not -- they wanted to take and which</p> <p>17 customers they didn't want to take.</p> <p>18 Q. Do you know how long they spent</p> <p>19 conducting that exercise?</p> <p>20 A. I think a lot of it was done prior to</p> <p>21 the final bid as far as, you know, first blush,</p> <p>22 on the larger clients. They probably spent a</p> <p>23 little extra time on the smaller clients.</p> <p>24 Q. Okay. And when you say a little extra</p> <p>25 time, you said that the entire process took a</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 couple of months --</p> <p>3 A. Some of the customers -- I'm sorry.</p> <p>4 Q. That's okay.</p> <p>5 You said that the entire process took</p> <p>6 a couple of months. How long would you say was</p> <p>7 spent on analyzing the customer base?</p> <p>8 A. I don't know how much time in</p> <p>9 particular. The main review for the customer</p> <p>10 base was that they cleared for some market</p> <p>11 makers and it wasn't a business, I think, that</p> <p>12 we wanted to be in, so it was carving out which</p> <p>13 ones you wanted to take and which ones you</p> <p>14 didn't want to take.</p> <p>15 Q. Okay. Did you do a -- were you</p> <p>16 involved in any type of credit check of the</p> <p>17 customers that you were -- that were in the --</p> <p>18 A. No.</p> <p>19 Q. -- accounts? Okay.</p> <p>20 And did you say that the [R] - this</p> <p>21 first acquisition from 2006 that we discussed</p> <p>22 was an acquisition of just a customer business,</p> <p>23 or did it also include proprietary portfolio?</p> <p>24 A. It was just the customer business. We</p> <p>25 took over [R] proprietary business to clear it</p>
Page 20	Page 21
<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 for them, so we didn't buy the positions. They</p> <p>3 maintained the positions and we were the</p> <p>4 clearing agent for them.</p> <p>5 Q. Okay. Were there any other</p> <p>6 transactions other than the three that we</p> <p>7 discussed so far that you were involved in</p> <p>8 reviewing?</p> <p>9 A. Just along the way we did some mergers</p> <p>10 and I was involved in the [REDACTED]</p> <p>11 acquisition. I was involved in the merger we</p> <p>12 did with [R] but more for maintaining the</p> <p>13 regulatory atmosphere, making sure we were</p> <p>14 complying with that.</p> <p>15 Q. Did you have any role in negotiating</p> <p>16 the terms of any of those transactions?</p> <p>17 A. I -- we had a separate group that did</p> <p>18 the negotiation that determined how much to pay</p> <p>19 for them. I was consulted by them for various</p> <p>20 issues but didn't negotiate the price.</p> <p>21 Q. Do you have any experience with</p> <p>22 proprietary options or futures trading</p> <p>23 strategies?</p> <p>24 A. I ran the regulatory group at [R] for</p> <p>25 [R], so in doing the regulatory reports,</p>	<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 you had to understand what we were doing. As we</p> <p>3 went into a new business or a new process or new</p> <p>4 product, I had sign-off authority over it to</p> <p>5 make sure we were doing it accurately.</p> <p>6 Q. And what type of information would you</p> <p>7 require in that role about the trading strategy?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 You can answer.</p> <p>10 A. We need to know what the desk was</p> <p>11 doing so that we could allocate it properly for</p> <p>12 capital purposes and for haircut purposes as</p> <p>13 well as to make sure we were producing it</p> <p>14 properly on our financial statements.</p> <p>15 At one point in time we started doing</p> <p>16 volatility trading and wanted to make sure that</p> <p>17 we had all the right information and that it was</p> <p>18 recorded properly, at the end of the day we had</p> <p>19 all the correct information.</p> <p>20 Q. Was there a particular name of the</p> <p>21 volatility trading positions that were acquired,</p> <p>22 do you know?</p> <p>23 A. No, we didn't acquire them. They were</p> <p>24 a new business that we instituted within the</p> <p>25 firm.</p>

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<p>1 HIGHLY CONFIDENTIAL - D. McISAAC</p> <p>2 (The non-highly confidential portion</p> <p>3 will continue on the next page.)</p> <p>4</p> <p>5</p> <p>6</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>1 D. McIsaac</p> <p>2 Q. Are you familiar with the term "VIX"?</p> <p>3 A. VIX is a -- it's an index that's</p> <p>4 traded over the -- I'm not sure if it's</p> <p>5 over-the-counter or exchange-traded. I think</p> <p>6 it's exchange-traded, but it's, if I remember</p> <p>7 correctly, it's the volatility index of the</p> <p>8 market. You're trading the volatility index.</p> <p>9 Q. What's your understanding of the risk</p> <p>10 profile of a VIX position in a volatile market?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 Vague.</p> <p>13 You can answer if you're able.</p> <p>14 A. I'm not a risk man so I don't know. I</p> <p>15 wouldn't venture to guess what the risk profile</p> <p>16 is. We would normally use quants and people</p> <p>17 like that to determine that information.</p> <p>18 Q. Do you have an understanding of the</p> <p>19 risk profile of any other types of</p> <p>20 exchange-traded derivatives?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 Vague.</p> <p>23 A. Just from the standpoint of dealing</p> <p>24 with them and understanding how the market</p> <p>25 moves, not from a risk standpoint or a value at</p>
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<p>1 D. McIsaac</p> <p>2 risk standpoint. We would have other people</p> <p>3 that were responsible for that.</p> <p>4 Q. Is it fair to say that you're not an</p> <p>5 expert on risk management in terms of</p> <p>6 proprietary trading?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 You can answer.</p> <p>9 A. I'm not an expert on risk trading, on</p> <p>10 risk management. Again, in our firms we would</p> <p>11 have separate people that were responsible for</p> <p>12 risk management processes and procedures.</p> <p>13 Q. What types of risks would you be</p> <p>14 knowledgeable about when analyzing an</p> <p>15 exchange-traded derivatives acquisition?</p> <p>16 A. Reputational risk, and, you know, if</p> <p>17 we were taking on something, the impact it would</p> <p>18 have on the firm's reputation; capital risk,</p> <p>19 from a standpoint of how much capital would be</p> <p>20 used and how it would impact the firm's capital</p> <p>21 position; financial statement disclosure and</p> <p>22 understanding that, and in general, the terms --</p> <p>23 general understanding of the business. So, in</p> <p>24 such when we took over our futures and clearance</p> <p>25 business, again, it's a customer-related</p>	<p>1 D. McIsaac</p> <p>2 business, really not much risk involved.</p> <p>3 Q. If there's not much risk involved,</p> <p>4 what is -- why is it generally the case that a</p> <p>5 transaction of this type would take two months</p> <p>6 to negotiate?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. It would take two months to finalize,</p> <p>9 to set up the systems because you're going to</p> <p>10 convert their information onto your systems, and</p> <p>11 to, you know, finalize all the information you</p> <p>12 need to finalize on it to do your due diligence</p> <p>13 and to, you know, to finalize everything around</p> <p>14 the purchase.</p> <p>15 Q. And would that give you enough time to</p> <p>16 analyze any problems with the books and records</p> <p>17 of the selling entity?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 You can answer.</p> <p>20 A. It would, although, you know, your</p> <p>21 first review would come up with anything</p> <p>22 significant usually.</p> <p>23 Q. Okay. And how long would the first</p> <p>24 review take?</p> <p>25 MR. OXFORD: Same objection.</p>

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<p>1 D. McIsaac</p> <p>2 A. Sometimes it could take a weekend.</p> <p>3 Q. And what's the longest that it could</p> <p>4 take?</p> <p>5 A. It may be a couple weeks, possibly.</p> <p>6 It's according to what you're doing and how --</p> <p>7 what other things you have to do at that point</p> <p>8 in time.</p> <p>9 Q. One of the things that you mentioned</p> <p>10 when you were describing your general areas of</p> <p>11 expertise was margin requirements at the OCC.</p> <p>12 Can you describe for me what your background and</p> <p>13 familiarity is in that regard?</p> <p>14 A. Well, from the firm's financial</p> <p>15 standpoint, you know, we needed to know what the</p> <p>16 margin requirements were, how they impacted the</p> <p>17 customer reserve formula, how they impacted the</p> <p>18 firm in general to know what margin was being</p> <p>19 called; the rules and regulations of the OCC,</p> <p>20 how it impacts additional margin requirements at</p> <p>21 points in time for firms, an understanding of</p> <p>22 that. I worked for a firm that was -- I don't</p> <p>23 think it's a secret -- was having some financial</p> <p>24 difficulties, so we did have a lot of</p> <p>25 conversations with the regulators over the</p>	<p>1 D. McIsaac</p> <p>2 margin requirements.</p> <p>3 Q. Okay. Can you describe generally what</p> <p>4 the problems were with the firm that you just</p> <p>5 described?</p> <p>6 A. We lost a lot of money. UBS lost a</p> <p>7 lot of money.</p> <p>8 Q. Lost a lot of money on what?</p> <p>9 A. On various trading strategies.</p> <p>10 Q. Would that include their trading</p> <p>11 strategies at the OCC?</p> <p>12 A. I do not believe so.</p> <p>13 Q. Okay. What was the context of your</p> <p>14 involvement with the OCC?</p> <p>15 A. As a regulator, a regulated entity, as</p> <p>16 our clearing org., they had a concern on our</p> <p>17 capital position and our ability to fulfill our</p> <p>18 obligations to it. I interfaced with them to</p> <p>19 keep abreast of what the firm was doing, how we</p> <p>20 were doing, and what we were -- what we were</p> <p>21 taking to maintain our capital base and keep</p> <p>22 them comfortable from a financial perspective.</p> <p>23 Q. Were you able to keep them</p> <p>24 comfortable?</p> <p>25 A. I believe so.</p>
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<p>1 D. McIsaac</p> <p>2 Q. Did they ever threaten to liquidate</p> <p>3 the account?</p> <p>4 A. Not to my knowledge.</p> <p>5 Q. Did they ever increase the margin</p> <p>6 requirements because of the financial situation</p> <p>7 of the company?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 A. As long as this is confidential, yes.</p> <p>10 Q. Do you know the extent to which they</p> <p>11 did that?</p> <p>12 A. 30 percent requirement, additional</p> <p>13 requirement. I think it was called Phase 3 or</p> <p>14 Level 3.</p> <p>15 Q. Did they ever refuse to allow the</p> <p>16 company to withdraw excess that happened to be</p> <p>17 in an account on any given day?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 A. Not that I'm aware of.</p> <p>20 Q. Did you deal with the OCC in this</p> <p>21 regard with respect to customer accounts, firm</p> <p>22 or market maker accounts, or both?</p> <p>23 A. It was the overall relationship we had</p> <p>24 with the OCC.</p> <p>25 Q. So they were both?</p>	<p>1 D. McIsaac</p> <p>2 A. So it was firm and customer.</p> <p>3 Q. Do you have an understanding of what</p> <p>4 the OCC's rights are vis-a-vis clearing members</p> <p>5 when they have insecurities about</p> <p>6 creditworthiness?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. I understand I think they have four</p> <p>9 levels for firms. Level 1 being no concerns; I</p> <p>10 believe their Level 2 is an alert status, where</p> <p>11 they pay a little bit more attention to how the</p> <p>12 firm is doing; Level 3 is where they raise the</p> <p>13 margin requirements by 30 percent; and I believe</p> <p>14 Level 4 is even more severe, where they raise it</p> <p>15 to 50 percent.</p> <p>16 Q. At what level do they start</p> <p>17 threatening to liquidate accounts?</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 A. I don't know.</p> <p>20 Q. You've never experienced that?</p> <p>21 A. I've never experienced that.</p> <p>22 Q. Do you know what level LBI was at in</p> <p>23 September of 2008?</p> <p>24 A. No, I do not.</p> <p>25 Q. Did you ask anyone that?</p>

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<p>1 D. McIsaac</p> <p>2 A. I may have asked, and I don't know if</p> <p>3 I ever got -- I don't believe I ever got an</p> <p>4 answer.</p> <p>5 Q. Do you have a sense of which level</p> <p>6 they would be at given what you have learned</p> <p>7 under the course of your studies in this case?</p> <p>8 MR. OXFORD: I'll object to the form</p> <p>9 of the question.</p> <p>10 MR. GREEN: Objection also.</p> <p>11 MR. KAY: Objection.</p> <p>12 A. I don't know.</p> <p>13 Q. What are the OCC's -- withdrawn. Do</p> <p>14 you have an understanding of how the OCC</p> <p>15 computes margin requirements as it relates to</p> <p>16 volatility?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Again, I'm not an expert in that area.</p> <p>19 I have somewhat of a knowledge that they are</p> <p>20 looking at the potential movement in the assets</p> <p>21 and look for margin to satisfy a market movement</p> <p>22 of a one- or two-day market swing based on some</p> <p>23 kind of theoretical pricing models.</p> <p>24 Q. Okay. You just said that you're not</p> <p>25 an expert in the area. What area were you</p>	<p>1 D. McIsaac</p> <p>2 referring to?</p> <p>3 A. In how they calculate the margin</p> <p>4 requirements.</p> <p>5 Q. Are the -- is the OCC's formula</p> <p>6 guaranteed to ensure that in the event of a</p> <p>7 liquidation there would not be a deficit in the</p> <p>8 margin account?</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 A. I don't think any calculation can</p> <p>11 ensure anything. I think their calculation is</p> <p>12 there for whatever they feel they need to</p> <p>13 address as far as the volatility of the firm</p> <p>14 and/or the marketplace.</p> <p>15 Q. Is it possible that a firm, a</p> <p>16 broker-dealer could have an excess in an account</p> <p>17 and nevertheless, upon a liquidation the</p> <p>18 following day, incur a cost that exceeds the</p> <p>19 amount that they had posted?</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 A. I don't have a relevance to look at to</p> <p>22 determine that. I don't know. I've never seen</p> <p>23 it happen. I don't know.</p> <p>24 Q. You don't know if it's possible for</p> <p>25 the liquidation to cost more than what the</p>
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<p>1 D. McIsaac</p> <p>2 margin posted?</p> <p>3 A. I would assume anything is possible.</p> <p>4 I don't know if it's ever happened or there's</p> <p>5 any, you know, history of it happening.</p> <p>6 Q. Would it be more or less likely to</p> <p>7 happen in a particularly volatile market based</p> <p>8 on what you know about how the OCC generally</p> <p>9 formulates their margin requirements?</p> <p>10 MR. OXFORD: Objection to the form.</p> <p>11 A. I guess in a volatile market anything</p> <p>12 is more possible to happen. It would be based</p> <p>13 on what their positions were at the time, were</p> <p>14 they long or short, were they short calls, short</p> <p>15 puts. It's, I guess, it's according to what the</p> <p>16 relevance is of their -- of their book.</p> <p>17 Q. You have your report there with you?</p> <p>18 A. Yes.</p> <p>19 Q. Could you turn to page 14, please, and</p> <p>20 could you review footnote 9?</p> <p>21 A. Yes.</p> <p>22 Q. Footnote 9 references an OCC Rule</p> <p>23 601(c), do you see that?</p> <p>24 A. Uh-huh. Yes, I do.</p> <p>25 Q. How long have you been familiar with</p>	<p>1 D. McIsaac</p> <p>2 this particular rule?</p> <p>3 A. In general terms, probably, you know,</p> <p>4 understanding how the OCC works, probably, in</p> <p>5 general terms, forever.</p> <p>6 Q. Okay.</p> <p>7 A. You know, but not specifically. I've</p> <p>8 never had to deal with it in specifics.</p> <p>9 Q. The rule states that the margin</p> <p>10 requirement shall be the amount of margin assets</p> <p>11 that must be held in the account such that the</p> <p>12 minimum expected liquidation value of the</p> <p>13 account after excluding positions covered by</p> <p>14 deposits in lieu of margin, measured at</p> <p>15 confidence levels as may be selected by the</p> <p>16 corporation from time to time, will not be less</p> <p>17 than zero.</p> <p>18 Do you have an understanding of what</p> <p>19 the phrase "minimum expected liquidating value" I</p> <p>20 means?</p> <p>21 MR. OXFORD: Objection to the form.</p> <p>22 Misstates the document.</p> <p>23 A. "Minimum expected liquidating value" I</p> <p>24 believe is the minimum value of the account</p> <p>25 after it liquidates.</p>

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 2 Q. Is it the minimum value or the minimum
 3 expected value?
 4 A. Minimum expected value upon
 5 liquidation.
 6 Q. Okay. And expected by whom?
 7 A. I'm assuming this is an OCC rule, so
 8 it's expected by them.
 9 Q. Okay.
 10 A. Based on the confidence level they
 11 select.
 12 Q. Do you have any understanding of what
 13 their confidence level would be based on?
 14 A. No, I do not.
 15 Q. In a market in which there's more than
 16 average volatility, would you agree that it's
 17 more likely that their margin requirement will
 18 be insufficient to cover the liquidating cost of
 19 an account?
 20 MR. OXFORD: Object to the form.
 21 A. Based on the fact that I have never
 22 heard of them liquidating anybody and making a
 23 call to the rest of the members, I don't know if
 24 it's ever been proven that that's the case.
 25 Q. Do you agree that there's more of a

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 2 morning?
 3 A. I have heard inferences to that. I
 4 might have seen an e-mail to that.
 5 Q. Have you -- in your experience, has
 6 the OCC ever, to your knowledge, refused a
 7 clearing member the ability to withdraw excess
 8 from its account?
 9 A. To my knowledge, I don't think so that
 10 I'm aware of, but I'm sure if they were
 11 concerned with other firms, they might have done
 12 the same with other firms. It was a time and
 13 place in the marketplace.
 14 Q. Is it possible that the OCC made that
 15 decision because it was concerned that the
 16 market may move away from the positions to the
 17 extent that the margin requirements were not
 18 going to be sufficient to cover the cost of a
 19 liquidation?
 20 A. I can't determine what OCC's thought
 21 process was. Maybe they knew there was an
 22 impending sale. I don't know what the rationale
 23 was on their part.
 24 Q. What is the OCC's overall goal in
 25 setting a margin requirement?

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 2 risk of that being the case in a particularly
 3 volatile market?
 4 MR. OXFORD: Object to the form.
 5 A. Could you repeat your question? because
 6 it was sort of one question, then another?
 7 Could you --
 8 Q. Sure. In a market in which there's
 9 more than average volatility, would you agree
 10 that it's more likely that their margin
 11 requirement will be insufficient to cover the
 12 liquidating cost of an account?
 13 MR. OXFORD: Same objection.
 14 A. More likely than what?
 15 Q. Than in an average -- than in a market
 16 with average volatility.
 17 A. Okay, so if you're saying in a market
 18 that has extreme volatility, could their
 19 calculations be more likely to -- to not be
 20 correct than in a market that has average
 21 volatility? I guess the answer would be yes.
 22 Q. Okay. Are you aware that on Friday,
 23 September 19, 2008, the OCC refused to allow LBI
 24 to withdraw margin from its account that was in
 25 excess of the requirements it had published that

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 2 MR. OXFORD: Object to the form.
 3 A. Again, I'm not there, but I believe
 4 their overall goal is to make sure that there's
 5 adequate margin so that the entities that
 6 they're clearing for can be or could be
 7 liquidated at no cost to the rest of the
 8 members.
 9 Q. Can you turn to page 29 of your
 10 report. In paragraph 70, you say here that
 11 "Barclays' acquisition balance sheet recognizes
 12 a day one gain of \$1.19 billion relating to
 13 options." Do you see that?
 14 A. Yes.
 15 Q. And in the next sentence, you say that
 16 "this appears to be comprised of approximately
 17 \$2.29 billion of margin at the OCC less \$1.1
 18 billion of liabilities at the OCC." Do you see
 19 that?
 20 A. Yes.
 21 Q. Would you agree that if Barclays had
 22 not received the \$2.29 billion of margin at the
 23 OCC, Barclays would have recorded a loss of \$1.1
 24 billion on these options on its acquisition
 25 balance sheet?

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A. I'm not sure. From my understanding the proprietary assets, proprietary options at OCC were positive by about 300 million. I believe the short side was an affiliate that cleared through the OCC through -- that was a subordinated affiliate. So I believe the assets they were buying were positive or net asset value of about 300 million as well as they were part of a larger portfolio of assets that they were buying.

So they might have -- I don't see where the loss came from because I believe it was affiliates positions, but even if there was, it would be offset by possibly gains in other areas.

Q. Can you describe the larger portfolio of assets that Barclays was buying?

A. I believe there was a repo that had significant value of assets for which they forgave a liability of Lehman's in lieu of the assets.

Q. Okay. Were they long positions or short positions?

A. Long positions.

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A. Those short positions, yes.

Q. Okay. And the long positions still were coming over?

MR. OXFORD: Object to the form.

Q. Is that correct?

A. My understanding of the Clarification Letter and the APA, yes.

Q. And do you understand, generally, the nature of the agreement with respect to the assets that were pledged under the Fed repo?

A. Could you be a little more specific? I'm not sure what your question is.

Q. Sure. Was there a give and take with respect to the long positions that were pledged at the Fed repo?

MR. OXFORD: Object to the form.

MR. KAY: Same objections.

A. What's give and take? I just don't know what you mean by that. If you could --

Q. Sure. What is your understanding of the -- of the transaction as it related to the assets in the Fed repo?

MR. OXFORD: Object to the form.

A. My understanding is that the Fed was

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Q. Were there any short positions undertaken on the fixed equity side?

A. I don't believe so.

Q. Were there short equity positions at Lehman outside of that repo?

MR. OXFORD: Object to the form.

A. I don't know. I would assume there might have been, but I don't know.

Q. Do you recall reviewing the Asset Purchase Agreement that the parties signed on September 16?

A. Yes.

Q. Do you recall what the amount of long and short positions was that was described in that document?

A. I believe it was 70 billion long, 69 billion short.

Q. Do you have any reason to believe that the 69 billion short didn't still exist by Monday, the 22nd of September, 2008?

A. I have no reason to know what the number was at that point in time.

Q. Is it fair to say that those ceased being part of the transaction?

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providing Lehman with liquidity, somewhere 45, 50 billion dollars, I don't remember exactly, and that was secured by assets of I think I read somewhere about 4 to 5 billion dollars extra in assets.

I believe Barclays assumed that repo. I believe they took over most of the assets, possibly, not all of them, and those were long assets that they -- that was part of the purchase agreement at the end.

Q. Do you have any -- did you study the pleadings in this case that related to the Fed repo transaction?

MR. OXFORD: Object to the form.

A. I don't believe so. I don't think I did.

Q. Okay. Are you aware that Barclays had expressed concern over the value of the assets in the Fed repo relative to the amount of cash it was advancing?

A. No. If I didn't read the pleadings, I probably don't know that.

Q. You mentioned that there were affiliate positions that you believe were part

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<p>1 D. McIsaac</p> <p>2 of the account that you referenced liabilities</p> <p>3 for in paragraph 70 of your report?</p> <p>4 A. Uh-huh.</p> <p>5 Q. Can you describe generally what your</p> <p>6 understanding was with respect to the transfer</p> <p>7 of those positions to Barclays?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 Misstates his testimony.</p> <p>10 A. There was an affiliate that signed a</p> <p>11 subordination agreement between them and LBI,</p> <p>12 and I believe the OCC is a party to that,</p> <p>13 whereby they would allow their securities to be</p> <p>14 commingled with the firm's securities. It's an</p> <p>15 advantage usually for the firm because it gets</p> <p>16 them better margin rates, possibly. And it was</p> <p>17 my understanding it was short positions of the</p> <p>18 affiliate.</p> <p>19 From my understanding of reading most</p> <p>20 of the stuff I've read, I didn't -- I do not</p> <p>21 believe that Barclays was taking over any</p> <p>22 affiliates accounts.</p> <p>23 Q. Okay. I'm showing you an exhibit</p> <p>24 that's been marked as Exhibit 51. Do you</p> <p>25 recognize this document?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes, it's the Transfer and Assumption</p> <p>3 Agreement.</p> <p>4 Q. And did you review this in connection</p> <p>5 with preparing your report?</p> <p>6 A. Yes.</p> <p>7 Q. Do you see in the first "whereas"</p> <p>8 clause on the first page where it says, "Lehman</p> <p>9 is a clearing member of OCC and carries one or</p> <p>10 more accounts (nos. 74, 84 and 273)"?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And it defines that as "Account," with</p> <p>13 a capital A?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Is it your understanding that</p> <p>16 the term "account" there encompasses the</p> <p>17 accounts that you referenced in relation to</p> <p>18 paragraph 70 of your report?</p> <p>19 A. I believe they use the same accounts,</p> <p>20 yes.</p> <p>21 Q. If you go down to paragraph 1(b) on</p> <p>22 that same page, do you see where it says,</p> <p>23 "Barclays hereby accepts such sale, assignment,</p> <p>24 and transfer of the Account, agrees to be bound</p> <p>25 by and receive the benefits of maintaining such</p>
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<p>1 D. McIsaac</p> <p>2 Account, and assumes and agrees to perform each</p> <p>3 obligation arising out of or to be performed</p> <p>4 with respect to the activity in the Account"?</p> <p>5 A. Yes.</p> <p>6 Q. Do you understand that to mean that</p> <p>7 Barclays assumed settlement responsibility for</p> <p>8 all of the positions in all of the Lehman's</p> <p>9 accounts at the OCC?</p> <p>10 A. Yes. I think Barclays assumed</p> <p>11 clearance and settlement of all the accounts</p> <p>12 there.</p> <p>13 Q. Okay. And what is the basis for your</p> <p>14 understanding that Barclays -- withdrawn.</p> <p>15 Is it fair to say that Barclays was</p> <p>16 responsible for settling and clearing the</p> <p>17 positions in the 074F and 074M accounts</p> <p>18 regardless of whether they were held on the firm</p> <p>19 account on behalf of an affiliate?</p> <p>20 A. Yes, they would have been responsible</p> <p>21 for settling and clearing and liquidating if</p> <p>22 need be.</p> <p>23 Q. Does that mean that on short positions</p> <p>24 that were held on behalf of affiliates Barclays</p> <p>25 would have to advance any securities that were</p>	<p>1 D. McIsaac</p> <p>2 owed or advance any cash that was owed on an</p> <p>3 exercise or an assignment of one of those</p> <p>4 positions?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 A. It means they would have either</p> <p>7 settled the transactions if they were called or</p> <p>8 closed them out.</p> <p>9 Q. You say in your report that Barclays</p> <p>10 charged back the LBI estate for the cost of</p> <p>11 closing out affiliate positions. Let me give</p> <p>12 you the page reference.</p> <p>13 If you turn to pages 26 and 27 of your</p> <p>14 report, paragraph 66 on page 26, you say,</p> <p>15 "Barclays did not assume any risk with respect</p> <p>16 to LBI affiliate customers' futures positions."</p> <p>17 Oh, wait. I'm sorry. Let me get to</p> <p>18 the options positions because that's what we're</p> <p>19 talking about now.</p> <p>20 MR. OXFORD: I think it's probably</p> <p>21 page 21, Trish, you're looking for.</p> <p>22 MS. BLOOMER: Thank you.</p> <p>23 Q. You say in paragraph 51 that Barclays</p> <p>24 has charged back the LBI estate for the cost of</p> <p>25 maintaining and closing out those positions.</p>

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<p>1 D. McIsaac</p> <p>2 You see that?</p> <p>3 A. Yes.</p> <p>4 Q. What is -- is the Dziemian declaration</p> <p>5 that you cite here the only factual basis for</p> <p>6 that statement?</p> <p>7 A. I believe there's a schedule that I</p> <p>8 saw that had those amounts in it. I'm not sure</p> <p>9 if it came from Dziemian's declaration or where</p> <p>10 else it might have come from, but his</p> <p>11 declaration did say they were charging them</p> <p>12 back.</p> <p>13 MS. BLOOMER: I think maybe this is a</p> <p>14 good time to take a first break and that way</p> <p>15 I can pull an extra document that I missed.</p> <p>16 MR. OXFORD: Okay. That would be</p> <p>17 great. Thanks.</p> <p>18 THE VIDEOGRAPHER: The time is 10:25.</p> <p>19 We're going off the record.</p> <p>20 (Recess.)</p> <p>21 THE VIDEOGRAPHER: This is the start</p> <p>22 of tape number 2. The time is 10:43. We</p> <p>23 are back on the record.</p> <p>24 BY MS. BLOOMER:</p> <p>25 Q. Welcome back, Mr. McIsaac.</p>	<p>1 D. McIsaac</p> <p>2 A. Thank you.</p> <p>3 Q. I want to show you a document -- I</p> <p>4 think we're going to have to mark this. It's</p> <p>5 already been marked, but I don't have the marked</p> <p>6 copy. So, Exhibit 685.</p> <p>7 (Exhibit 685, Declaration of Daniel</p> <p>8 Dziemian, marked for identification, as of</p> <p>9 this date.)</p> <p>10 Q. I'm showing you a document that's</p> <p>11 marked as Exhibit 685, Mr. McIsaac. We were</p> <p>12 looking before the break at paragraph 51 of your</p> <p>13 expert report in which you state that Barclays</p> <p>14 has charged back the LBI estate for the cost of</p> <p>15 maintaining and closing out those positions.</p> <p>16 You see that?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And which positions precisely</p> <p>19 were you referring to in this statement?</p> <p>20 A. Let me just see. I guess it would be</p> <p>21 non-PIM customer transactions.</p> <p>22 Q. Okay. Would that include affiliates?</p> <p>23 A. Yes.</p> <p>24 Q. And you cite the Dziemian declaration</p> <p>25 at paragraphs 12 and 14 through 16 as the</p>
Page 48	Page 49
<p>1 D. McIsaac</p> <p>2 support for that statement.</p> <p>3 Can you review those paragraphs and</p> <p>4 tell me where in this declaration it suggests</p> <p>5 that Barclays charged back the LBI estate for</p> <p>6 the cost of maintaining and closing out the</p> <p>7 affiliate positions?</p> <p>8 A. I presume it's in paragraph 14.</p> <p>9 Q. And what portion of the paragraph?</p> <p>10 A. The fourth or fifth line down, "The</p> <p>11 net effect of the close-out and liquidation of</p> <p>12 all positions and equities relating to the 074C</p> <p>13 LBI Affiliate Options on the LBI Bridge Account</p> <p>14 is a net receivable from LBI to Barclays in the</p> <p>15 amount of \$80 million."</p> <p>16 Q. And are you assuming in that statement</p> <p>17 that a net receivable on the LBI Bridge Account</p> <p>18 is the equivalent of charging back the estate</p> <p>19 for the cost of closing out those options?</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 A. If you record a receivable, I assume</p> <p>22 you think somebody's going to pay you for that,</p> <p>23 yes.</p> <p>24 Q. Do you understand what the purpose of</p> <p>25 the LBI Bridge Account was?</p>	<p>1 D. McIsaac</p> <p>2 A. I'm -- by the words there, I assume</p> <p>3 it's a bridge account between two entities or</p> <p>4 between two systems. On one side you book --</p> <p>5 you may book the receivables. On the other side</p> <p>6 you book the payables.</p> <p>7 Q. Okay. If you look at paragraph 13, it</p> <p>8 says, "The bridge accounts were necessary to</p> <p>9 account for the fact that the settlement bank</p> <p>10 and the settlement depository as of</p> <p>11 approximately September 23, 2008, were switched</p> <p>12 to Barclays while the accounts of these</p> <p>13 customers and affiliates remained with LBI."</p> <p>14 You see that?</p> <p>15 A. Yes.</p> <p>16 Q. Is it possible that the bridge account</p> <p>17 was necessitated by accounting concerns and the</p> <p>18 need to process trades on both sides on a system</p> <p>19 as opposed to because Barclays was charging back</p> <p>20 the estate for any of those costs?</p> <p>21 A. Could you repeat --</p> <p>22 MR. OXFORD: Object to the form.</p> <p>23 A. Sorry.</p> <p>24 Could you repeat the last part?</p> <p>25 Because I don't understand the part where you</p>

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<p>1 D. McIsaac</p> <p>2 talked about charge back, the way you said it.</p> <p>3 Q. Okay. Is it possible that the bridge</p> <p>4 account was necessitated by accounting concerns</p> <p>5 and the need to process trades on both sides on</p> <p>6 a system as opposed to because Barclays was</p> <p>7 charging back the estate for any of those costs?</p> <p>8 MR. OXFORD: Same objection.</p> <p>9 MR. GREEN: Objection.</p> <p>10 A. If they were booking them on both</p> <p>11 sides, then wouldn't they be charging them back?</p> <p>12 If they were taking responsibility for them,</p> <p>13 then they would have written them off to an</p> <p>14 expense, not a receivable.</p> <p>15 Q. Okay. Did you review Gary Romain's</p> <p>16 deposition testimony in preparing your report?</p> <p>17 A. I believe I read it, yes.</p> <p>18 Q. Okay. I'm going to mark this exhibit</p> <p>19 as Exhibit 686.</p> <p>20 (Exhibit 686, Deposition of Gary</p> <p>21 Romain, marked for identification, as of</p> <p>22 this date.)</p> <p>23 Q. You have in front of you Gary Romain's</p> <p>24 deposition testimony. Can you turn to page 141,</p> <p>25 please?</p>	<p>1 D. McIsaac</p> <p>2 A. Do you want your copy back?</p> <p>3 Q. Pardon? I realize it's yellow.</p> <p>4 A. That's fine.</p> <p>5 Q. I wanted to direct you to that portion</p> <p>6 of it, so it's fine. Thank you.</p> <p>7 Do you see the portion that's boxed in</p> <p>8 that deposition transcript?</p> <p>9 A. Yes.</p> <p>10 Q. And do you see where Gary Romain says</p> <p>11 that "we had written off 100 percent of it and</p> <p>12 in the acquisition accounting, but it's been</p> <p>13 recorded as an expense, an expense being a</p> <p>14 deduction from the negative goodwill on the</p> <p>15 acquisition"?</p> <p>16 A. Let me read it, please.</p> <p>17 MR. OXFORD: And Mr. McIsaac, to the</p> <p>18 extent you feel necessary to answer the</p> <p>19 question, you should read as much as you</p> <p>20 need of Mr. Romain's testimony.</p> <p>21 Q. In fact, perhaps it would be better</p> <p>22 for you to start on page 139 at the bottom of</p> <p>23 the page, line 22, when Mr. Romain starts</p> <p>24 describing --</p> <p>25 A. Uh-huh.</p>
Page 52	Page 53
<p>1 D. McIsaac</p> <p>2 Q. -- the accounting treatment on the</p> <p>3 affiliate options that we've been discussing.</p> <p>4 MR. OXFORD: Thank you, Trish.</p> <p>5 A. Okay. I've read it. Can you repeat</p> <p>6 your question? I'm sorry.</p> <p>7 Q. Sure. Do you see in on page 140 in</p> <p>8 the answer provided on line 7 through 15 Gary</p> <p>9 Romain says, "So if you look at the payments</p> <p>10 made to close out positions and for some OCC</p> <p>11 related-costs, the total payment made by</p> <p>12 Barclays was \$104 million and the receivable,</p> <p>13 which might otherwise have been recognized, has</p> <p>14 been written off"?</p> <p>15 A. Yes.</p> <p>16 Q. Did you read that in preparing your</p> <p>17 report?</p> <p>18 A. I probably read this, this deposition,</p> <p>19 so yes, I probably read this, right.</p> <p>20 Q. Is this inconsistent with your</p> <p>21 understanding that Barclays charged back the LBI</p> <p>22 estate for the cost of closing out affiliate</p> <p>23 positions?</p> <p>24 A. My understanding, and even from</p> <p>25 reading here, it looks like they recorded a</p>	<p>1 D. McIsaac</p> <p>2 receivable which was charging them back, they</p> <p>3 didn't take them to P&L directly, and eventually</p> <p>4 wrote them off. Maybe they deemed them</p> <p>5 uncollectable, I'm not sure why, but I don't</p> <p>6 know why you would set them up as a receivable</p> <p>7 if you were going to write them off if you</p> <p>8 didn't -- if you were taking responsibility from</p> <p>9 the start. So Mr. Dziemian basically said that</p> <p>10 they were being set up as receivables.</p> <p>11 Q. Would you agree that Barclays incurred</p> <p>12 a cost of \$104 million according to the record</p> <p>13 facts that you've see in this case on the</p> <p>14 affiliate options positions in the 074C account?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. I agree that that's what Mr. Romain</p> <p>17 says in his deposition. I have not seen</p> <p>18 anything to show me what the numbers are or had</p> <p>19 anybody provide information, but that's what he</p> <p>20 says here.</p> <p>21 Q. Do you have any reason to dispute or</p> <p>22 doubt the fact that Barclays incurred costs in</p> <p>23 closing out these positions?</p> <p>24 A. No, I do not.</p> <p>25 Q. Do you have any reason to believe that</p>

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<p>1 D. McIsaac</p> <p>2 Barclays collected the amounts that it incurred</p> <p>3 in closing out affiliate positions from the LBI</p> <p>4 estate?</p> <p>5 A. No, I do not.</p> <p>6 Q. Do you believe that Barclays did</p> <p>7 collect the costs from the LBI estate that it</p> <p>8 incurred in closing out --</p> <p>9 A. I don't know if they did or didn't.</p> <p>10 Q. -- the LBI affiliate positions?</p> <p>11 Please allow me to finish the</p> <p>12 question.</p> <p>13 -- in closing out the LBI affiliate</p> <p>14 positions?</p> <p>15 A. I don't know if they collected or not</p> <p>16 or presented a bill or not.</p> <p>17 Q. Is it your general understanding that</p> <p>18 entities write off amounts that they were able</p> <p>19 to collect?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 A. No. You usually write them off when</p> <p>22 you think there might be a -- you may not be</p> <p>23 able to collect them.</p> <p>24 Q. Do you have a general understanding of</p> <p>25 the priorities in a SIPC liquidation with</p>	<p>1 D. McIsaac</p> <p>2 respect to creditor claims?</p> <p>3 A. I'm not a SIPC expert. I have a</p> <p>4 general understanding of the SIPC claims.</p> <p>5 Q. Are you an expert in Customer</p> <p>6 Protection Rules?</p> <p>7 A. Yes.</p> <p>8 Q. What's your understanding of where</p> <p>9 customers fall in terms of priority when they</p> <p>10 have claims against a SIPC Trustee or an estate</p> <p>11 and bank in SIPC proceedings relative to general</p> <p>12 Creditors?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I believe SIPC customers have first</p> <p>15 priority to the assets in the customer estate</p> <p>16 and then share rateably with the general</p> <p>17 Creditors if there's not enough -- not enough</p> <p>18 moneys in the general estate to satisfy them.</p> <p>19 Q. Is it your understanding that the LBI</p> <p>20 estate has sufficient assets currently to cover</p> <p>21 all customer claims?</p> <p>22 MR. OXFORD: Object to the form.</p> <p>23 A. I don't know if they have or don't</p> <p>24 have. I think that's still being assessed.</p> <p>25 Q. Is it possible that the reason</p>
Page 56	Page 57
<p>1 D. McIsaac</p> <p>2 Barclays wrote these expenses off is because</p> <p>3 Barclays didn't expect it would ever be able to</p> <p>4 recover these costs from the Lehman estate?</p> <p>5 A. I can't determine why Barclays wrote</p> <p>6 them off.</p> <p>7 Q. Do you generally consider a</p> <p>8 broker-dealer who is in SIPC proceedings to be a</p> <p>9 good credit risk?</p> <p>10 A. No, I would not consider them a good</p> <p>11 credit risk.</p> <p>12 Q. Would you extend credit to a</p> <p>13 broker-dealer in SIPC liquidation?</p> <p>14 A. Would I extend credit to them after</p> <p>15 they were in liquidation?</p> <p>16 MR. OXFORD: Object to the form.</p> <p>17 A. Sorry.</p> <p>18 Probably if it was court-approved, I</p> <p>19 think there's some way where the court can</p> <p>20 approve you providing credit to a liquidated</p> <p>21 estate, but no, in general terms, I wouldn't.</p> <p>22 Q. Why not?</p> <p>23 A. Because you have a bankrupt estate</p> <p>24 that you don't know the creditworthiness of</p> <p>25 whether or not you'll be paid.</p>	<p>1 D. McIsaac</p> <p>2 Q. Do you think -- do you have any reason</p> <p>3 to believe that Barclays thought it would be</p> <p>4 paid by the LBI estate for losses it incurred on</p> <p>5 affiliate positions that it took clearance</p> <p>6 responsibility for?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 MR. GREEN: Objection.</p> <p>9 A. Again, I don't know what was in</p> <p>10 Barclays' mind and what they thought when they</p> <p>11 wrote off the receivables. I'm not sure what</p> <p>12 the basis was.</p> <p>13 Q. Would you agree that your report</p> <p>14 characterizes the level of risk associated with</p> <p>15 affiliate positions to be minimal, if it existed</p> <p>16 at all?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. Yes, I think it says it's less risky</p> <p>19 because the credit is borne by the affiliates,</p> <p>20 the market risk is borne by the affiliates, and</p> <p>21 that I believe Barclays was not taking</p> <p>22 responsibility for any affiliates' positions.</p> <p>23 Q. But you agree that Barclays was taking</p> <p>24 settlement responsibility for those positions?</p> <p>25 A. It appears that in the TAA that they</p>

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<p>1 D. McIsaac</p> <p>2 took settlement responsibility for them.</p> <p>3 Q. And are you aware of the financial</p> <p>4 state of the LBI affiliates themselves during</p> <p>5 the month of September 2008?</p> <p>6 MR. OXFORD: Object to the form.</p> <p>7 A. I believe some of them were in</p> <p>8 liquidation and some of them may not have been.</p> <p>9 Q. Would you consider them a credit risk</p> <p>10 at that time?</p> <p>11 MR. OXFORD: Object to the form. You</p> <p>12 mean any time in September?</p> <p>13 Q. Sure. We'll start with any time in</p> <p>14 September.</p> <p>15 A. I don't know what the credit risk</p> <p>16 would have been in September prior to anybody</p> <p>17 going into liquidation, what the analysis would</p> <p>18 have been, and people will take risk based on</p> <p>19 what the rewards they think they will receive.</p> <p>20 Q. What reward was Barclays receiving by</p> <p>21 agreeing to take over settlement responsibility</p> <p>22 for the affiliate positions?</p> <p>23 A. Maybe the business that was there and</p> <p>24 maybe they were willing to take on an additional</p> <p>25 risk to -- to get the customer business and</p>	<p>1 D. McIsaac</p> <p>2 whatever other business was there.</p> <p>3 Q. Were they going to see any profit from</p> <p>4 taking over the affiliate positions themselves?</p> <p>5 A. When you take over a business, not</p> <p>6 every piece of it may be profitable. So you may</p> <p>7 accept some risk to get the profitable pieces of</p> <p>8 it. I don't know why they assumed the</p> <p>9 responsibility for the affiliates if they didn't</p> <p>10 want them.</p> <p>11 Q. Earlier you were describing</p> <p>12 transactions in which you conducted due</p> <p>13 diligence in one of your prior companies, and</p> <p>14 you explained that the acquirer spent a week to</p> <p>15 several weeks reviewing the customer base to</p> <p>16 determine which customers it wanted and which</p> <p>17 customers it didn't?</p> <p>18 A. Uh-huh.</p> <p>19 Q. Do you believe that Barclays had</p> <p>20 adequate time during the week of September 15,</p> <p>21 2008 to review all of the customers that it was</p> <p>22 acquiring or not acquiring from LBI?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 A. It possibly didn't have time to review</p> <p>25 all the customers, but it certainly had time to</p>
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<p>1 D. McIsaac</p> <p>2 review the affiliates and could have determined</p> <p>3 that they didn't want to take the affiliate</p> <p>4 accounts if that was the case.</p> <p>5 Q. What is your understanding of what</p> <p>6 would have happened in the event that Barclays</p> <p>7 had refused to take responsibility for the</p> <p>8 affiliate positions?</p> <p>9 A. I don't know what would have happened</p> <p>10 if they refused to take responsibility for it.</p> <p>11 Q. Is it your understanding that the</p> <p>12 affiliate positions were commingled at the OCC</p> <p>13 with firm positions and also with customer</p> <p>14 positions?</p> <p>15 A. Yes.</p> <p>16 Q. Is it your understanding that there</p> <p>17 were both affiliate and firm positions in the</p> <p>18 074F account at the OCC?</p> <p>19 A. Yes.</p> <p>20 Q. And is it your understanding that</p> <p>21 there were affiliate positions commingled with</p> <p>22 customer positions in the 074C account at the</p> <p>23 OCC?</p> <p>24 A. Yes.</p> <p>25 Q. What is your understanding of the</p>	<p>1 D. McIsaac</p> <p>2 position that the OCC took during the week of</p> <p>3 September 15 with respect to Lehman Brothers as</p> <p>4 a clearing member?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 Vague.</p> <p>7 A. I'm not sure what position the OCC</p> <p>8 took with regard to them. You know, I thought</p> <p>9 they were going on as business as usual. They</p> <p>10 looked like they were clearing their trades and</p> <p>11 assigning their trades, so I don't see any -- I</p> <p>12 haven't seen anything that says what the OCC did</p> <p>13 or didn't do.</p> <p>14 Q. Do you have any basis to say what</p> <p>15 would have happened to LBI's accounts with the</p> <p>16 OCC if Barclays had refused to take over</p> <p>17 settlement responsibility for those accounts?</p> <p>18 A. I don't have a basis, but I assume the</p> <p>19 OCC would have liquidated the accounts.</p> <p>20 Q. Why do you assume that?</p> <p>21 A. Because Lehman was bankrupt at the</p> <p>22 time or was entering into SIPC liquidation, so I</p> <p>23 think the OCC as a first move would liquidate</p> <p>24 the accounts. It doesn't mean that various</p> <p>25 positions in those accounts couldn't be</p>

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1 D. McIsaac
2 transferred to another broker-dealer.
3 Q. Do you know how much time Barclays and
4 Lehman had to negotiate the terms of this
5 transaction before they entered into the APA?
6 A. No, I do not.
7 Q. Would it surprise you to hear that it
8 was less than 24 hours?
9 MR. OXFORD: Object to the form. You
10 can answer.
11 A. It would -- wouldn't surprise me or
12 not surprise me. Lehman was in financial
13 difficulty at that time and there were reports
14 in the papers that a lot of people were looking
15 at Lehman from time to time. So I have no idea
16 when Barclays started to look at it and
17 determined what they wanted to do.
18 Q. You didn't review that in connection
19 with this report?
20 A. Review? What would I have reviewed to
21 say that? I'm asking what -- what would I have
22 reviewed?
23 Q. I understand that you're asking that,
24 but I'm asking you what did you review in order
25 to understand the circumstances in which this

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1 D. McIsaac
2 MR. OXFORD: Object to the form.
3 A. I don't think I gave much thought to
4 how much time they spent negotiating it. I
5 understand the timing of what was happening
6 around then. I don't know how long they were
7 talking about the APA, what conversations they
8 may have had during the time period. I don't
9 believe that's public information.
10 Q. Were you allowed to ask questions of
11 fact witnesses during your investigation?
12 A. I --
13 MR. OXFORD: I'll object to the form
14 of the question.
15 Q. Okay. Go ahead. You can answer.
16 MR. OXFORD: I'm not sure in terms
17 of --
18 Q. Did you talk to anybody -- let me
19 rephrase the question.
20 MS. BLOOMER: Thanks, Neil.
21 Q. Did you talk to anybody who was
22 involved in the negotiation of the transaction?
23 A. No, I did not.
24 Q. Did you speak with the advisors who
25 were present at the time?

1 D. McIsaac
2 deal was negotiated?
3 A. I read the Asset Purchase Agreement.
4 I read the Clarification Letter. I read the
5 TAA. You know, I read some e-mails that went
6 around. As a general knowledge of what was
7 happening in 2008, you know, I lived it.
8 Q. Okay. So is it fair to say that you
9 prepared your report without knowing the amount
10 of time that it took Lehman -- that Barclays and
11 Lehman had to negotiate the APA?
12 A. I didn't specifically find out how
13 much time they took to negotiate it and I don't
14 know what that has to do with what we're talking
15 about. I'm not sure what the timing, you know,
16 has to do with what they decided or what they
17 didn't decide to do. They certainly didn't have
18 to do it, I don't think, at any point in time.
19 There was not a gun held to their head, I don't
20 believe. I mean, unless I didn't -- there's
21 more information than I know.
22 Q. Uh-huh. So when you prepared your
23 opinions in your report, did you believe it was
24 possible that the parties had spent more than a
25 week negotiating the terms of the APA?

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1 D. McIsaac
2 A. No, I did not.
3 MR. OXFORD: Sorry. If you can slow
4 down, Mr. McIsaac, to let me get my
5 objection.
6 I'll object to the form of the
7 question and particularly to the vagueness
8 of the term "advisors."
9 Q. Okay. When did you speak with
10 Deloitte?
11 MR. OXFORD: Object to the form.
12 A. Regarding? Excuse me, regarding what?
13 Q. You said earlier today that in
14 preparing for your deposition today you spoke
15 with Deloitte. Was that the first time that you
16 spoke with them?
17 A. Deloitte is the financial advisors for
18 the Trustee. In working on the original work I
19 did with the motion, I spoke to Deloitte, if
20 that's what you mean, but not in relation to
21 this.
22 Q. Okay. Was Deloitte present, to your
23 understanding, during the negotiations of this
24 deal?
25 A. I don't believe they were, but I don't

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1 D. McIsaac
 2 know.
 3 Q. Did you ask them?
 4 A. No, I did not.
 5 Q. Did you ask them any of the
 6 circumstances under which the deal was
 7 negotiated?
 8 A. No, I did not.
 9 Q. Did you ask anyone what the
 10 circumstances were of the deal at the time it
 11 was negotiated?
 12 A. I think I understand what was going on
 13 in the environment at that time. I don't think
 14 I had to ask specifically what was happening in
 15 the environment at that time. It was a rough,
 16 you know, a difficult time and I don't know if
 17 Barclays had one day or five days or how long
 18 they were reviewing the transaction.
 19 Q. You don't know if it was ten days?
 20 A. I don't know if it was ten days.
 21 Q. And you don't know if it was a month
 22 that Barclays had to review the transaction?
 23 A. That's right.
 24 Q. Okay.
 25 A. But that doesn't change my thoughts on

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 2 the negotiations that took place during the
 3 structuring of that deal?
 4 A. No, I do not.
 5 Q. With respect to the deals that you
 6 have personal knowledge of, what's the shortest
 7 amount of time that you know of in which an
 8 acquisition of a broker-dealer business took
 9 place?
 10 MR. OXFORD: Object to the form.
 11 Vague.
 12 A. I -- I've been involved in some
 13 acquisitions and mergers that I don't know how
 14 much time was spent in doing the negotiation.
 15 When UBS and Swiss Bank merged, I have no idea
 16 how long it took for them to do the due
 17 diligence and decide on the merger.
 18 Q. What's the shortest amount of time
 19 with respect to a transaction that you do have
 20 an idea of how long it took?
 21 A. Probably a month or so.
 22 Q. You say in your report that the
 23 circumstances of this transaction don't affect
 24 your opinion. Do you recall saying that in your
 25 report?

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 2 it because whether or not you had one day or
 3 ten, you could still decide to buy something or
 4 not buy something. You can decide what you want
 5 to buy and what you don't want to buy.
 6 Q. Can you remind me, if you haven't
 7 testified to this already -- strike that.
 8 What is the shortest amount of time
 9 that you've ever seen an acquisition of a
 10 broker-dealer business consummated in?
 11 MR. OXFORD: Object to the form.
 12 A. I believe Bank of America bought
 13 Lehman Brothers over a weekend.
 14 Q. Do you know how long -- did they spend
 15 any time negotiating that transaction prior to
 16 that weekend?
 17 A. All I know is what I read in the
 18 papers, and I thought Bank of America was
 19 thinking of buying Lehman and instead bought
 20 Merrill at that point in time. I thought the
 21 negotiations happened over a weekend.
 22 Q. Do you know whether they had done due
 23 diligence prior to that weekend?
 24 A. I don't know.
 25 Q. Do you have any knowledge at all of

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 2 A. I believe so.
 3 Q. Okay. The fact that this transaction
 4 closed in 24 -- was negotiated in 24 hours
 5 doesn't have any impact on your opinion as to
 6 what was rational under those circumstances in
 7 terms of structuring the terms of the deal?
 8 MR. OXFORD: Objection.
 9 Q. Is that your opinion?
 10 MR. OXFORD: Object to the form.
 11 Assumes facts not in evidence.
 12 A. I believe it was negotiated. It
 13 didn't have to close, and until such time as it
 14 closed, there was still negotiations and I
 15 assume due diligence going on.
 16 Q. Is it your understanding that an
 17 agreement can be negotiated after it's executed?
 18 A. An agreement can be -- I don't -- I'm
 19 sorry, I'm not sure where you're going on that.
 20 "After it's executed," I'm not sure.
 21 Q. Sure. Do you agree that the parties
 22 would have negotiated the terms of the deal
 23 before they signed a binding agreement that
 24 expressed and set forth the terms of that deal?
 25 MR. OXFORD: Object to the form.

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<p>1 D. McIsaac</p> <p>2 You can answer.</p> <p>3 A. I'm sorry. I believe firms negotiate</p> <p>4 a shell of a deal and then usually negotiate the</p> <p>5 specifics. Until a final contract is signed and</p> <p>6 it's consummated, that is not, you know, it's</p> <p>7 not a closed deal.</p> <p>8 Q. Showing you a document that's been</p> <p>9 premarked as Exhibit 630.</p> <p>10 Can you take the time to review this</p> <p>11 e-mail and let me know when you're ready?</p> <p>12 (Document review.)</p> <p>13 A. Yes.</p> <p>14 Q. Did you review this document in</p> <p>15 preparing for your deposition today?</p> <p>16 A. I believe I might have seen this. I</p> <p>17 don't remember exactly, but I might have seen</p> <p>18 this e-mail trail.</p> <p>19 Q. And had you reviewed this document at</p> <p>20 the time you prepared your expert report on</p> <p>21 exchange-traded derivatives?</p> <p>22 A. I thought I just answered that. I</p> <p>23 think I might have reviewed this when I -- when</p> <p>24 I prepared it.</p> <p>25 Q. Oh, I was asking you whether you</p>	<p>1 D. McIsaac</p> <p>2 reviewed it when you prepared for the deposition</p> <p>3 today --</p> <p>4 A. Oh, no.</p> <p>5 Q. -- was my first question.</p> <p>6 A. No, no, I did not review it before</p> <p>7 today, for preparation today. I might have</p> <p>8 reviewed it in preparing my report.</p> <p>9 Q. You're not sure? You might --</p> <p>10 A. I believe I've seen this. I know I've</p> <p>11 seen the top of it. I don't know if I've seen</p> <p>12 the whole other trail.</p> <p>13 Q. Okay. If you turn to the second page,</p> <p>14 will you look at the paragraph that's</p> <p>15 denominated paragraph 3?</p> <p>16 A. Uh-huh.</p> <p>17 Q. It says, "If the transaction does not</p> <p>18 close tonight, OCC would need to immediately</p> <p>19 liquidate and close out the LBI accounts and is</p> <p>20 preparing to do so." Do you see that?</p> <p>21 A. Yes.</p> <p>22 Q. You see that this is an e-mail from</p> <p>23 James McDaniel of Sidley?</p> <p>24 A. Uh-huh.</p> <p>25 Q. And it's to Ed Rosen of Cleary</p>
Page 72	Page 73
<p>1 D. McIsaac</p> <p>2 Gottlieb. Do you know who Ed Rosen is?</p> <p>3 A. Yes. He's a lawyer for Cleary</p> <p>4 Gottlieb.</p> <p>5 Q. And do you know who Cleary Gottlieb</p> <p>6 was representing in this transaction?</p> <p>7 A. I believe they were representing</p> <p>8 Barclays.</p> <p>9 Q. And you see Hughes Hubbard is also</p> <p>10 copied on these e-mails, Giddens and Kobak?</p> <p>11 A. Uh-huh.</p> <p>12 Q. Do you know who they are?</p> <p>13 A. Mr. Giddens is the Trustee and Mr.</p> <p>14 Kobak is his legal counsel, I believe.</p> <p>15 Q. Okay. And you see that the SPIC</p> <p>16 organization, Steve Harbeck, was also copied?</p> <p>17 A. Yes.</p> <p>18 Q. You said earlier in your testimony</p> <p>19 that you didn't think the parties had to do the</p> <p>20 deal in any particular amount of time, and I</p> <p>21 believe you said they didn't have a gun to their</p> <p>22 head. Do you recall that testimony?</p> <p>23 A. Yes.</p> <p>24 Q. Do you agree that this e-mail suggests</p> <p>25 that there was some urgency to the parties in</p>	<p>1 D. McIsaac</p> <p>2 closing the deal in the timeframe that they did?</p> <p>3 MR. OXFORD: Object to the form.</p> <p>4 A. I believe the e-mail from the -- Mr.</p> <p>5 McDaniel at Sidley Austin was relaying that to</p> <p>6 Mr. Rosen. Barclays still did not have to go</p> <p>7 through with the deal if they didn't want to go</p> <p>8 through with the deal. I mean, again, nobody</p> <p>9 was holding a gun to their head saying if you</p> <p>10 don't do this, I'm going to shoot you. They</p> <p>11 could have walked away from it, I assume, at</p> <p>12 that point in time or they could have postponed</p> <p>13 the closing. I don't know if they could have</p> <p>14 done that, but --</p> <p>15 Q. Do you think they could have postponed</p> <p>16 the closing and avoided liquidation of the OCC</p> <p>17 account?</p> <p>18 A. I think you could have negotiated</p> <p>19 anything with the OCC if they wanted to talk to</p> <p>20 them about it. I don't know what negotiations</p> <p>21 were going on. I don't know why this was being</p> <p>22 pushed at this point in time.</p> <p>23 I mean, Barclays, when I said they</p> <p>24 didn't have a gun to their head, they could have</p> <p>25 walked away from the deal at any point in time.</p>

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<p>1 D. McIsaac</p> <p>2 If they didn't think they had enough time to do</p> <p>3 the due diligence and to understand what they</p> <p>4 were buying, they didn't have to buy it I guess.</p> <p>5 Q. And they didn't have to buy it if they</p> <p>6 didn't like the terms of the deal either, right?</p> <p>7 A. Right.</p> <p>8 Q. You agree that the parties were aware</p> <p>9 that the OCC was at least threatening to</p> <p>10 liquidate the accounts on the 22nd if the deal</p> <p>11 didn't close that morning?</p> <p>12 A. Yes.</p> <p>13 Q. Do you have any experience that would</p> <p>14 allow you to surmise on what an OCC</p> <p>15 liquidation -- how an OCC liquidation would have</p> <p>16 proceeded?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. I would assume they would either</p> <p>19 auction the positions off or, you know, closed</p> <p>20 them out. I'm not sure how they would have</p> <p>21 proceeded. I'm not -- I have not seen one in my</p> <p>22 past experience.</p> <p>23 Q. Any liquidation or any auction have</p> <p>24 you seen?</p> <p>25 A. I have not seen a liquidation at the</p>	<p>1 D. McIsaac</p> <p>2 OCC. I have not been involved in a liquidation</p> <p>3 at the OCC.</p> <p>4 Q. Have you been involved in a</p> <p>5 liquidation at any other clearing organization?</p> <p>6 A. I have not personally been involved,</p> <p>7 no.</p> <p>8 Q. What is your understanding of what the</p> <p>9 OCC's rights are in the event of a liquidation?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 A. I believe they have the right to</p> <p>12 liquidate the positions and charge back to the</p> <p>13 clearing firm any losses they incur that's not</p> <p>14 covered by the margin that they have available,</p> <p>15 and if they don't, I assume -- I believe they</p> <p>16 have the right to charge back to other members</p> <p>17 of the clearing org.</p> <p>18 Q. Okay. So you would agree then that</p> <p>19 any margin that was posted at the OCC was</p> <p>20 accessible to the OCC in order to cover the</p> <p>21 costs of a liquidation?</p> <p>22 A. Yes.</p> <p>23 Q. And would you agree that all of the</p> <p>24 margin posted at the OCC was accessible to the</p> <p>25 OCC in the event that they wanted to auction off</p>
Page 76	Page 77
<p>1 D. McIsaac</p> <p>2 the positions instead of liquidating them?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any knowledge of any other</p> <p>5 clearing organizations liquidating or auctioning</p> <p>6 off positions?</p> <p>7 A. I believe that during the week I've</p> <p>8 been informed that the CME auctioned off LBI's</p> <p>9 positions.</p> <p>10 Q. Do you have any understanding of the</p> <p>11 approach that the CME took to auctioning off the</p> <p>12 positions?</p> <p>13 A. I haven't reviewed anything firsthand,</p> <p>14 but I believe they took the various positions</p> <p>15 and would have gone to other firms and asked</p> <p>16 them to assume them.</p> <p>17 Q. And do you know what the CME was</p> <p>18 offering in exchange for other members assuming</p> <p>19 those obligations?</p> <p>20 A. No, I'm not, I'm not sure of the</p> <p>21 negotiations that occurred with them.</p> <p>22 Q. Do you have an understanding of the</p> <p>23 amount of money that was consumed in the auction</p> <p>24 of the CME -- in the CME's auction of LBI's</p> <p>25 proprietary positions?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. I have heard a number maybe a billion</p> <p>4 dollars, but I don't know if I've seen the</p> <p>5 actual documents.</p> <p>6 Q. I'm showing you a document that's</p> <p>7 marked as Exhibit 442. I certainly don't expect</p> <p>8 you to read the whole document.</p> <p>9 A. Okay, good. I was going to say can I</p> <p>10 please get a brief recess if that's the case.</p> <p>11 Q. This is a copy of the hearing that</p> <p>12 took place before Judge Peck in the bankruptcy</p> <p>13 proceeding on September 19, 2008. Have you had</p> <p>14 occasion to review any portion of the sale</p> <p>15 hearing transcript?</p> <p>16 A. I have reviewed this maybe six months</p> <p>17 ago.</p> <p>18 Q. Can you turn to page 61, the full</p> <p>19 paragraph on page 61 starting "Since the hearing</p> <p>20 last Wednesday," and it continues, "and in the</p> <p>21 space of roughly 24 hours, your Honor, there</p> <p>22 have been a number of significant events.</p> <p>23 Yesterday the Chicago Mercantile Exchange</p> <p>24 unilaterally decided to close out all of</p> <p>25 Lehman's positions on that exchange. That</p>

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<p>1 D. McIsaac</p> <p>2 closeout resulted in a loss to Lehman of</p> <p>3 approximately \$1.6 billion." Do you see that?</p> <p>4 A. Yes, I do.</p> <p>5 Q. Do you recall, does this refresh your</p> <p>6 recollection --</p> <p>7 A. Yes, I think this is probably where I</p> <p>8 saw it.</p> <p>9 Q. Do you have any reason to doubt the</p> <p>10 accuracy of the statement that's made on this</p> <p>11 page?</p> <p>12 A. No, I do not.</p> <p>13 Q. So you'd agree that the Chicago</p> <p>14 Mercantile Exchange closed out Lehman's</p> <p>15 positions at a cost of \$1.6 billion?</p> <p>16 MR. OXFORD: Object to the form.</p> <p>17 A. That's what it says here.</p> <p>18 Q. And that's what you believe happened?</p> <p>19 A. That's what I believe happened.</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 Q. What's your understanding of what a</p> <p>22 SIPC trustee's objectives are when analyzing the</p> <p>23 terms of a proposed bankruptcy sale?</p> <p>24 MR. OXFORD: I'll object to the form.</p> <p>25 A. I assume that they -- any sale is</p>	<p>1 D. McIsaac</p> <p>2 going to occur of any assets, they would have to</p> <p>3 make sure that they are protecting the customers</p> <p>4 and receive, you know, value for the assets</p> <p>5 they're selling.</p> <p>6 Q. And is the customer -- is the</p> <p>7 preservation of value for customers the sole</p> <p>8 objective of a trustee, do you know?</p> <p>9 MR. OXFORD: I'll object to the form</p> <p>10 of the question.</p> <p>11 A. No, I don't think so. I think they're</p> <p>12 supposed to preserve the whole estate.</p> <p>13 Q. Are trustees also interested in</p> <p>14 maximizing the number of customer accounts that</p> <p>15 can be preserved and transferred to a solvent</p> <p>16 broker-dealer?</p> <p>17 MR. OXFORD: Objection to the form.</p> <p>18 A. I believe both transfers are a</p> <p>19 priority of SIPC.</p> <p>20 Q. Have you ever advised the SIPC trustee</p> <p>21 in analyzing the terms of a proposed bankruptcy</p> <p>22 sale?</p> <p>23 A. No, I have not.</p> <p>24 Q. Do you have any expertise in advising</p> <p>25 on what the proper objectives are of a trustee</p>
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<p>1 D. McIsaac</p> <p>2 in that circumstance?</p> <p>3 MR. OXFORD: Objection to the form.</p> <p>4 A. No, I do not.</p> <p>5 Q. Is it your understanding that the</p> <p>6 proprietary positions in Lehman's OCC account as</p> <p>7 of the week of September 15 carried exposure?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 A. All positions carry exposure. I'm not</p> <p>10 sure if I'm answering the question, your</p> <p>11 question, but all positions, as far as I'm</p> <p>12 concerned, carry exposure.</p> <p>13 Q. By transferring positions do you agree</p> <p>14 that you're eliminating that exposure?</p> <p>15 MR. OXFORD: I object to the form.</p> <p>16 A. By the person transferring them?</p> <p>17 Q. Uh-huh.</p> <p>18 A. Yes, they would limit their exposure.</p> <p>19 Q. So you would agree that LBI and the</p> <p>20 Trustee, by agreeing to transfer the proprietary</p> <p>21 positions to Barclays, was eliminating any</p> <p>22 exposure that it had on those positions?</p> <p>23 A. They would no longer have exposure on</p> <p>24 those positions, I assume, after they have</p> <p>25 transferred them.</p>	<p>1 D. McIsaac</p> <p>2 Q. And would that be to the benefit of</p> <p>3 customers, to eliminate exposure to the -- to a</p> <p>4 SIPC trustee's estate?</p> <p>5 MR. OXFORD: Objection to the form.</p> <p>6 A. It would benefit customers if you were</p> <p>7 paid properly for them, yes. So if you took</p> <p>8 exposure off and received consideration, then it</p> <p>9 would be good. If you just took exposure off</p> <p>10 and received no consideration, I don't know if</p> <p>11 it would be good. You'd have to analyze each</p> <p>12 one separately.</p> <p>13 Q. That would depend on the value of the</p> <p>14 positions at any given point in time, is that</p> <p>15 fair to say?</p> <p>16 MR. OXFORD: Objection to the form.</p> <p>17 A. It would depend on the value of the</p> <p>18 positions, the marketplace, you know, what --</p> <p>19 what the impact of disposing of those positions</p> <p>20 would have or the downside it could have.</p> <p>21 Q. If there's net exposure on a set of</p> <p>22 positions that you transfer, would it be</p> <p>23 irrational to do that for no consideration?</p> <p>24 MR. OXFORD: Objection to the form.</p> <p>25 A. When you say "net exposure," there's</p>

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<p>1 D. McIsaac</p> <p>2 exposure, so would it be rational to transfer</p> <p>3 them for no consideration? I don't know at the</p> <p>4 point in time. I don't know -- the worst case</p> <p>5 you could be is zero if you're long. So not</p> <p>6 getting anything for them, if you liquidate</p> <p>7 them, gave them away for nothing or had them</p> <p>8 liquidated, you would be at the same place, and</p> <p>9 if the margin would cover any potential losses,</p> <p>10 you might be better off having the OCC liquidate</p> <p>11 them than give them away for free.</p> <p>12 Q. You testified earlier that you could</p> <p>13 never guarantee that the margin would be</p> <p>14 sufficient to cover exposures in a liquidation;</p> <p>15 is that right?</p> <p>16 MR. OXFORD: Objection. Misstates</p> <p>17 testimony.</p> <p>18 A. Yes, I believe I said something to</p> <p>19 that effect.</p> <p>20 Q. So would you agree that if you have</p> <p>21 short positions, there's exposure that can't be</p> <p>22 eliminated entirely unless you transfer the</p> <p>23 positions?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 Misstates his testimony.</p>	<p>1 D. McIsaac</p> <p>2 A. They could be liquidated the next day</p> <p>3 and you would relieve your exposure.</p> <p>4 Q. I'm showing you an exhibit that's been</p> <p>5 marked 676A. Do you recognize this document?</p> <p>6 A. Yes, I believe I've seen this before.</p> <p>7 Q. Did you review it in preparing for</p> <p>8 today's deposition?</p> <p>9 A. No, I don't believe so.</p> <p>10 Q. Did you review it at the time that you</p> <p>11 prepared your report?</p> <p>12 A. Yes.</p> <p>13 Q. If you could turn to Exhibit 1 of this</p> <p>14 document. You see that Exhibit 1 shows the</p> <p>15 margin requirements on dates from 9/15/2008</p> <p>16 through 9/19/2008?</p> <p>17 A. Yes.</p> <p>18 Q. Okay. And just so that I don't force</p> <p>19 you to take this out of context, you should read</p> <p>20 the paragraph where he describes what the</p> <p>21 margin -- which margin requirements he's</p> <p>22 referring to. So if you look at --</p> <p>23 MR. OXFORD: Paragraph 6, I think.</p> <p>24 Q. -- paragraph 6 of Mr. Jones'</p> <p>25 declaration, he says, "Exhibit 1 hereto shows</p>
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<p>1 D. McIsaac</p> <p>2 for each day from September 15 through September</p> <p>3 19, 2008, the total requirement at the open of</p> <p>4 business for each day across all of LBI's OCC</p> <p>5 accounts, the total value of collateral of the</p> <p>6 open business of each day across all of LBI's</p> <p>7 OCC accounts, and the excess or deficit at the</p> <p>8 open of business on each day across all of LBI's</p> <p>9 OCC accounts." Do you see that?</p> <p>10 A. Yes.</p> <p>11 Q. Do you see that on between September</p> <p>12 15 and September 16 the margin requirement for</p> <p>13 the OCC accounts went from \$789,583,205 to</p> <p>14 \$1,359,001,075?</p> <p>15 A. Yes, I see that.</p> <p>16 Q. Would you agree with me that's an</p> <p>17 increase of over \$500 million in a single day?</p> <p>18 A. Yes.</p> <p>19 Q. If you look two lines down from</p> <p>20 September 17, 2008 to September 18, 2008, do you</p> <p>21 see that the margin requirement went from</p> <p>22 \$1,400,000,000 and change to \$2 billion, over \$2</p> <p>23 billion, do you see that?</p> <p>24 A. Yes, I see that.</p> <p>25 Q. Would you agree that that's over a</p>	<p>1 D. McIsaac</p> <p>2 \$600 million increase in a single day?</p> <p>3 A. Yes.</p> <p>4 Q. You said a moment ago that the -- that</p> <p>5 LBI could have liquidated the following day and</p> <p>6 eliminated their exposure on their OCC accounts.</p> <p>7 Do you recall that testimony?</p> <p>8 A. Yes.</p> <p>9 Q. Would LBI have been able to know for</p> <p>10 certain that it would not -- strike that. Would</p> <p>11 LBI know for certain what the cost of</p> <p>12 liquidating the account on the following day</p> <p>13 would have been by looking at that day's margin</p> <p>14 requirements?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. Let me make sure I have your question</p> <p>17 clear. You're asking me as of the close of</p> <p>18 business the 19th, would LBI have known what the</p> <p>19 cost would be to close out their positions on</p> <p>20 top day the 22nd?</p> <p>21 Q. Yes.</p> <p>22 A. They would know what the closing price</p> <p>23 was on the 19th and use that as I guess a proxy</p> <p>24 for what, you know, for what they could possibly</p> <p>25 close it out and do some kind of an</p>

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 2 extrapolation on how they might impact the
 3 market.
 4 Q. Okay. And if the margin requirement
 5 is a proxy for exposure and increased by \$500
 6 million, as it had on two other days this week,
 7 would you agree that using Friday's close of
 8 business number may not be an accurate way to
 9 determine what the cost would be on Monday of
 10 closing out the positions?
 11 MR. OXFORD: Objection. Form.
 12 A. It's very difficult to determine that
 13 because I believe the 19th was a triple-witching
 14 day, so a lot of the exposures that were sitting
 15 there would have been closed out close of
 16 business. I don't know if this margin
 17 requirement is at the end of the day or the -- I
 18 believe this is the beginning of the day on the
 19 19th.
 20 Q. Uh-huh.
 21 A. So when all the options that they --
 22 that were in their account were called, anything
 23 that was expiring on the 19th would have had an
 24 impact on this amount. I don't know the balance
 25 or the size of the positions they had that were

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1 D. McIsaac
 2 Q. And it's your understanding that
 3 Lehman is the party that settled those weekend
 4 expirations?
 5 A. I believe any settlements would have
 6 had to occur because Barclays didn't own them at
 7 that point in time. So all of the settlement
 8 transactions would have had to go through
 9 Lehman, and I believe Lehman settled them all.
 10 To my knowledge, I think that's what happened.
 11 Q. If that's inaccurate, would that
 12 affect your opinion in any way?
 13 MR. OXFORD: Object to the form.
 14 A. Not necessarily, because I don't know
 15 the size of it, although I thought I -- I
 16 believe I saw some information that showed the
 17 pay/collects being a significant pay-back to
 18 Lehman on the 22nd or pay-back to the -- to the
 19 holder of the account on the 22nd.
 20 Q. Would it be rational for Barclays to
 21 accept the obligations on options expiring over
 22 the weekend of September 20th and 21st for short
 23 positions and yet not acquire the rights for any
 24 profit and loss on long positions?
 25 MR. OXFORD: Object to the form.

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 2 expiring on the 19th, but again, I believe if I
 3 remember Mr. Leitner's testimony, he looked at
 4 the margin as being a proxy for the most they
 5 could lose or the most that would cover
 6 Barclays' exposure.
 7 So, by looking at that, my guess this
 8 would be the worst place LBI would be in if they
 9 exposed. So if they were looking to transfer
 10 their assets, this might be a starting point for
 11 negotiations but not necessarily the ending
 12 point.
 13 Q. Okay. Whose responsibility do you
 14 understand it was to settle the trades that
 15 occurred over the expiration weekend, Barclays
 16 or Lehman's?
 17 A. I believe it was Lehman's.
 18 Q. You believe it was Lehman's?
 19 A. Barclays didn't sign the agreement
 20 until the 22nd. I believe they all settle over
 21 the weekend.
 22 Q. And when would the pays and collects
 23 from a weekend expiration be due?
 24 A. Monday morning, I believe, because you
 25 can't pay anything on the weekend.

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1 D. McIsaac
 2 A. I'm not sure -- please rephrase it.
 3 I'm not sure where -- what the question is
 4 asking.
 5 Q. Sure. There were long positions and
 6 short positions both in LBI's --
 7 A. Right.
 8 Q. -- OCC accounts; is that right?
 9 A. Right. Okay. Yes.
 10 Q. And any short positions that were
 11 exercised over the weekend of September 22 --
 12 20th and 21st would have resulted in a loss to
 13 the clearing member; is that right?
 14 MR. OXFORD: Objection to form.
 15 A. Not necessarily. If they had the
 16 assets to deliver against the ex -- the
 17 exercise, there would be no loss.
 18 Q. And if they didn't have the assets to
 19 deliver and they had to acquire them at the then
 20 market rates?
 21 A. If they had marked them --
 22 MR. OXFORD: Wait. I'm sorry. Can
 23 you just let me get my objection in?
 24 THE WITNESS: I'm sorry.
 25 MR. OXFORD: I'll object to the form.

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<p>1 D. McIsaac</p> <p>2 You can answer. Thank you.</p> <p>3 A. If they would have been marking their</p> <p>4 positions to market, they would have, I assume</p> <p>5 already, recorded those losses.</p> <p>6 Q. When do you think that Lehman recorded</p> <p>7 the losses that occurred over the weekend of</p> <p>8 September 20th and 21st?</p> <p>9 A. I believe you would record those</p> <p>10 effective the 19th because that's the option</p> <p>11 expiration date. At that point in time, you</p> <p>12 know what your locked-in is on your gains and</p> <p>13 losses. You would do that on a daily basis --</p> <p>14 Q. And when --</p> <p>15 A. -- of the market movement.</p> <p>16 Q. I apologize for interrupting you.</p> <p>17 And when would Lehman make the payment</p> <p>18 on those trades?</p> <p>19 A. I would assume the next business day.</p> <p>20 Q. And so you're assuming that Lehman</p> <p>21 paid any amounts due to settle short options</p> <p>22 that were in its account over the weekend of</p> <p>23 September 20th and -- 20th and 21st?</p> <p>24 MR. OXFORD: I'll object to the form.</p> <p>25 A. I assumed that not everything is cash</p>	<p>1 D. McIsaac</p> <p>2 settled so they might have delivered securities</p> <p>3 against those exercised calls or puts, and on</p> <p>4 the cash settle piece, that the pay/collect</p> <p>5 would occur on Monday morning. And if they</p> <p>6 didn't have securities to deliver, they would</p> <p>7 have to go out and buy the securities and make a</p> <p>8 delivery.</p> <p>9 MR. OXFORD: Trish, we've been going</p> <p>10 about another hour. I don't know if this is</p> <p>11 a good time to take a five-minute break.</p> <p>12 MS. BLOOMER: This is actually a good</p> <p>13 time. That would be fine. Off the record.</p> <p>14 THE VIDEOGRAPHER: The time is 11:36.</p> <p>15 This is the end of the tape labeled number</p> <p>16 2. We're going off the record.</p> <p>17 (Recess.)</p> <p>18 THE VIDEOGRAPHER: This is the start</p> <p>19 of the tape labeled number 3. The time is</p> <p>20 11:57. We are back on the record.</p> <p>21 BY MS. BLOOMER:</p> <p>22 Q. Mr. McIsaac, could you turn in your</p> <p>23 report to page 7, please. The first full</p> <p>24 sentence at the top of the page --</p> <p>25 A. Give me one second. One second.</p>
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<p>1 D. McIsaac</p> <p>2 Q. Sure.</p> <p>3 A. Okay.</p> <p>4 Q. The first full sentence at the top of</p> <p>5 the page, you say, "The circumstances of the</p> <p>6 transaction between Lehman and Barclays do not</p> <p>7 change my opinions in this matter."</p> <p>8 What circumstances were you referring</p> <p>9 to in that sentence?</p> <p>10 A. The timing of everything happening,</p> <p>11 the -- I think Mr. Leitner was talking about how</p> <p>12 much time, you know, it took the quickness of</p> <p>13 the negotiations.</p> <p>14 Q. Any other circumstances that you</p> <p>15 were --</p> <p>16 A. No. I mean, the marketplace, you</p> <p>17 know, everything that was happening at the time.</p> <p>18 Q. Anything other than the timing and the</p> <p>19 marketplace that you were -- that you had in</p> <p>20 mind when you said the circumstances of --</p> <p>21 A. No, I think just the market, what was</p> <p>22 happening in the market at the time --</p> <p>23 I'm sorry.</p> <p>24 Q. Are there any circumstances other than</p> <p>25 the timing and the marketplace that you had in</p>	<p>1 D. McIsaac</p> <p>2 mind when you said "the circumstances of the</p> <p>3 transaction between Lehman and Barclays do not</p> <p>4 change my opinions in this matter"?</p> <p>5 A. No. Basically that was it.</p> <p>6 Q. With respect to the timing, what was</p> <p>7 your understanding of the circumstances?</p> <p>8 A. I believe that it was negotiated in</p> <p>9 a -- it didn't have, you know, three or four</p> <p>10 months of negotiations, as far as I know. It</p> <p>11 was done fairly quickly, although I don't know</p> <p>12 how much time and how much due diligence was</p> <p>13 done along the way.</p> <p>14 Lehman had been in trouble for a</p> <p>15 while, so I'm assuming a lot of firms were doing</p> <p>16 some things, reviewing it to determine, you</p> <p>17 know, if there was a, you know, a good place to</p> <p>18 go in and buy and, you know, there possibly was</p> <p>19 the Lehman executives might have been shopping</p> <p>20 the firms. I don't know what happened, but I do</p> <p>21 know that a lot of things happened fairly</p> <p>22 quickly.</p> <p>23 Q. Were you assuming that Barclays had</p> <p>24 plenty of time to do due diligence before</p> <p>25 settling on the terms of the transaction it was</p>

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<p>1 D. McIsaac</p> <p>2 willing to enter into?</p> <p>3 MR. OXFORD: Objection to the form.</p> <p>4 A. I don't know how much time Barclays</p> <p>5 had to do due diligence. I don't know how long</p> <p>6 they were talking to Lehman and what information</p> <p>7 they had.</p> <p>8 And they were buying pretty much the</p> <p>9 whole entity, so, you know, it's not like they</p> <p>10 had to do due diligence on certain things. It</p> <p>11 was a viable entity. It wasn't capital -- it</p> <p>12 had adequate capital. You know, it didn't</p> <p>13 appear that they were buying the broker-dealer,</p> <p>14 that there was that much of a concern around it.</p> <p>15 The customers were the customers. I don't know</p> <p>16 if there was any major concern on the customers</p> <p>17 they had.</p> <p>18 Q. Do you have an understanding of what</p> <p>19 the value of the entity was that Barclays was</p> <p>20 acquiring?</p> <p>21 MR. OXFORD: Objection to the form.</p> <p>22 A. I believe if I looked at the August</p> <p>23 Focus that was not filed, it showed a net -- a</p> <p>24 net equity of I want to say 3 to 5 billion, if I</p> <p>25 remember properly, correctly.</p>	<p>1 D. McIsaac</p> <p>2 Q. What was that number?</p> <p>3 A. 3 to 5 billion.</p> <p>4 Q. What, in your opinion, would be a</p> <p>5 typical amount of time for an entity to take</p> <p>6 doing due diligence on an acquisition the size</p> <p>7 of this one?</p> <p>8 MR. OXFORD: Objection to the form.</p> <p>9 A. I don't know how much time it would</p> <p>10 take. They ended up buying certain businesses,</p> <p>11 the customers' businesses, they bought assets</p> <p>12 like the buildings, things of that nature, and</p> <p>13 they bought some positions. How much time, I</p> <p>14 don't know. I don't know how much time they</p> <p>15 spent knowing what was going on.</p> <p>16 In the Lehman case, you know, Lehman</p> <p>17 was not in, from what I understand, capital,</p> <p>18 severe capital -- it was a liquidity crunch, and</p> <p>19 Lehman was having problems getting the</p> <p>20 information, getting the money they needed to</p> <p>21 support their assets. It didn't mean they</p> <p>22 didn't have good assets, it didn't mean the</p> <p>23 business was crumbling, it just meant they were</p> <p>24 having a liquidity crunch.</p> <p>25 I worked at Drexel. I saw what</p>
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<p>1 D. McIsaac</p> <p>2 happened to Drexel. It didn't necessarily mean</p> <p>3 the broker-dealer had a problem. There was</p> <p>4 illiquidity at the parent company, and that</p> <p>5 trickles down.</p> <p>6 Q. Do you mean to suggest that there was</p> <p>7 not a significant amount of risk that Barclays</p> <p>8 was encountering in acquiring this business?</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 A. I didn't say there wasn't a</p> <p>11 significant amount of risk. I think there was a</p> <p>12 discernible amount of risk. I think that buying</p> <p>13 customer positions, customer business, not that</p> <p>14 risky a business. Looks like they didn't buy</p> <p>15 the prime broker, which would have been the more</p> <p>16 risky of the customer businesses.</p> <p>17 Futures clearing is not what I would</p> <p>18 consider a very risky business. They bought</p> <p>19 certain assets, again, not everything that was</p> <p>20 what I consider ultimately, you know, extremely</p> <p>21 risky.</p> <p>22 Q. You're not an expert in risk</p> <p>23 management or risk assessment; is that right?</p> <p>24 MR. OXFORD: Objection to the form.</p> <p>25 A. General knowledge of risk I have. I'm</p>	<p>1 D. McIsaac</p> <p>2 not a quant. I don't, you know, determine the</p> <p>3 value what risk for a firm. I understand what</p> <p>4 assets are risky, what assets are not risky at a</p> <p>5 firm, what businesses are risky, what businesses</p> <p>6 are not risky, and I think, you know, in a firm</p> <p>7 of this size, it was a top, you know, three or</p> <p>8 four broker-dealer in the country for a long</p> <p>9 period of time. So, yes, there were risks</p> <p>10 there, but I think they were quantifiable.</p> <p>11 Q. Do you know how long it would take to</p> <p>12 assess the risk profile in a set of equities</p> <p>13 positions and options positions that was \$70</p> <p>14 billion on the long side and \$69 billion on the</p> <p>15 short side?</p> <p>16 MR. OXFORD: Object to the form.</p> <p>17 A. I don't think equities were the total</p> <p>18 70 and 69. I think there were a portion of</p> <p>19 that. I think a large portion of that inventory</p> <p>20 was government securities.</p> <p>21 Q. Do you know how much government</p> <p>22 securities were in that versus equities versus</p> <p>23 exchange-traded derivatives?</p> <p>24 A. I believe at one point in time I saw</p> <p>25 something that sort of broke it down, but I</p>

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<p>1 D. McIsaac</p> <p>2 don't remember exactly, but I believe equities</p> <p>3 were probably maybe 10 billion range.</p> <p>4 Q. Would you have experience that would</p> <p>5 qualify you to assess the risk profile</p> <p>6 associated with a set of positions of that size?</p> <p>7 MR. OXFORD: Object to the form.</p> <p>8 A. On a daily basis they are required to</p> <p>9 maintain capital. They have to assess their</p> <p>10 capital every day. Part of their capital is</p> <p>11 assessing the risk. They were on a daily basis</p> <p>12 assessing the risk of their capital. You could</p> <p>13 have easily used that information to determine</p> <p>14 where the risk was and, you know, from that</p> <p>15 standpoint, yes, determine the risk. When I</p> <p>16 file reports, I'm looking at the risk of the</p> <p>17 firm.</p> <p>18 Q. When you described the circumstances</p> <p>19 of the transaction between Lehman and Barclays</p> <p>20 on page 7 of your report, did you consider among</p> <p>21 those circumstances the options that Lehman had</p> <p>22 to the deal with Barclays?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 A. The options that Lehman had? I guess</p> <p>25 Lehman could have decided to sell or not sell.</p>	<p>1 D. McIsaac</p> <p>2 Q. Could they have decided to sell to a</p> <p>3 different entity?</p> <p>4 A. I'm sure they could have.</p> <p>5 Q. Could you pull Exhibit 442 out.</p> <p>6 That's the sale hearing transcript.</p> <p>7 A. Uh-huh.</p> <p>8 Q. And turn to page 101.</p> <p>9 A. Yes.</p> <p>10 Q. If you read the first three paragraphs</p> <p>11 or, you know, if you need to read a little bit</p> <p>12 more to get context.</p> <p>13 (Document review.)</p> <p>14 A. Okay.</p> <p>15 Q. In the second paragraph, it says,</p> <p>16 "And, yet, he would say nobody has expressed an</p> <p>17 interest to step into the shoes of -- excuse me,</p> <p>18 step into the shoes of Barclays, your Honor."</p> <p>19 The next paragraph says, "Lehman has not</p> <p>20 received any other interest since the</p> <p>21 commencement of the Chapter 11 cases." And it</p> <p>22 goes on to say, "If Lehman was approached by</p> <p>23 another potential buyer that he would consider</p> <p>24 the offer, provided that the company had</p> <p>25 sufficient liquidity to operate the business</p>
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<p>1 D. McIsaac</p> <p>2 without jeopardizing customer accounts. That</p> <p>3 has not happened, your Honor. So it is almost</p> <p>4 academic." Do you see that?</p> <p>5 A. Yes, I do.</p> <p>6 Q. Had you read this testimony in</p> <p>7 preparing for your -- or, in preparing your</p> <p>8 expert report?</p> <p>9 A. I read this report in the -- when I</p> <p>10 first started working with the Trustee regarding</p> <p>11 the motion, the motion on the 3-3.</p> <p>12 Q. You testified a moment ago that you</p> <p>13 were sure Lehman could have sold the assets to a</p> <p>14 different buyer. Does this refresh your</p> <p>15 recollection at all on the circumstances that</p> <p>16 Lehman was facing at the time?</p> <p>17 A. This says they have no buyers. It's</p> <p>18 Chapter 11. The Fed was providing them with</p> <p>19 liquidity earlier in the week before Barclays</p> <p>20 stepped into the shoes. The Fed could have</p> <p>21 continued to provide liquidity while they were</p> <p>22 looking for another purchaser.</p> <p>23 That has happened before. If they</p> <p>24 stepped in the shoes once before, I assume</p> <p>25 things could have been done, still been done in</p>	<p>1 D. McIsaac</p> <p>2 that fashion.</p> <p>3 Q. Do you agree that the court is being</p> <p>4 told at the September 19th sale hearing that it</p> <p>5 is almost academic for Lehman to find another</p> <p>6 potential buyer at that point?</p> <p>7 A. That's what it looks like here, yes,</p> <p>8 but I --</p> <p>9 Q. And if you --</p> <p>10 A. Excuse me. But it also says they</p> <p>11 weren't marketing the firm in the first</p> <p>12 paragraph on that page. So maybe if they did,</p> <p>13 they might have been able to find other buyers.</p> <p>14 Q. Okay. Can you read the second</p> <p>15 paragraph for me? "That notwithstanding the</p> <p>16 lack of a specific program for marketing, the</p> <p>17 sale of Lehman's broker-dealer business has been</p> <p>18 known worldwide. And, yet, he would say nobody</p> <p>19 has expressed an interest to step into the shoes</p> <p>20 of -- excuse me, step into the shoes of</p> <p>21 Barclays, your Honor."</p> <p>22 A. Uh-huh.</p> <p>23 Q. Do you see that?</p> <p>24 A. Yes.</p> <p>25 Q. Do you agree that the speaker in this</p>

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<p>1 D. McIsaac</p> <p>2 testimony is suggesting that they were not able</p> <p>3 to find another buyer for the business?</p> <p>4 A. No, I believe he's saying that it was</p> <p>5 known that the business might be for sale and</p> <p>6 nobody else has stepped up, but I believe the</p> <p>7 first paragraph says that they were not going</p> <p>8 out and marketing the sale of the business.</p> <p>9 Q. Do you have any understanding of why</p> <p>10 they weren't going out and marketing the</p> <p>11 business?</p> <p>12 A. No, I do not.</p> <p>13 Q. Could it be because they didn't have</p> <p>14 time to market the business because the</p> <p>15 transaction needed to close by the following</p> <p>16 Monday?</p> <p>17 A. This says the business has been known</p> <p>18 worldwide, so I don't know why it had to</p> <p>19 close -- I don't know what happened that made it</p> <p>20 have to close within a week's period.</p> <p>21 Q. Okay.</p> <p>22 A. If I looked at the financial</p> <p>23 statements that were not filed but prepared, it</p> <p>24 looked like they had adequate capital for the</p> <p>25 broker-dealer.</p>	<p>1 D. McIsaac</p> <p>2 Q. Okay. Can you turn to page 73. If</p> <p>3 you review where the court asks a question in</p> <p>4 the middle of the page, "In order for this</p> <p>5 transaction to be optimally closed from the</p> <p>6 perspective of SIPC, when should it close? Does</p> <p>7 it need to close this weekend before the markets</p> <p>8 open on Monday?"</p> <p>9 A. I'm sorry, I lost where you're</p> <p>10 reading.</p> <p>11 Q. Page 73.</p> <p>12 A. Yes, I'm on 73. I see, "The Court:</p> <p>13 Let me ask a question."</p> <p>14 Q. Oh, the next statement.</p> <p>15 A. I'm sorry.</p> <p>16 (Document review.)</p> <p>17 A. Uh-huh. Okay.</p> <p>18 Q. So you see where Mr. Caputo says to</p> <p>19 the court, in response to the court's question,</p> <p>20 "As soon as possible it needs to close. The</p> <p>21 sooner the better." Do you see that?</p> <p>22 A. Yes.</p> <p>23 Q. On the following page, the court asks,</p> <p>24 "Would it be your position on behalf of your</p> <p>25 client that, assuming the transaction, the sale</p>
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<p>1 D. McIsaac</p> <p>2 transaction that has been proposed to me today</p> <p>3 is approved, that the approval should happen</p> <p>4 before the close of today's hearing? In other</p> <p>5 words, we should stay here as late as we need to</p> <p>6 in order to get this done?" And Mr. Caputo</p> <p>7 says, "Yes, your Honor. That would be our</p> <p>8 recommendation." Do you see that?</p> <p>9 A. Yes.</p> <p>10 Q. Does this suggest to you that the</p> <p>11 transaction under contemplation did not need to</p> <p>12 close by Monday, September 22, 2008?</p> <p>13 A. I believe in the prior response by Mr.</p> <p>14 Caputo he said as soon as possible, and nothing</p> <p>15 was forcing Barclays to close this agreement.</p> <p>16 They did not have to do it if they didn't think</p> <p>17 they had done sufficient due diligence to -- to</p> <p>18 mandate a purchase of an asset like this.</p> <p>19 Q. Would you agree that at this sale</p> <p>20 hearing, which you read the transcript of, the</p> <p>21 parties were telling the court that it was</p> <p>22 critical to get this deal done within a matter</p> <p>23 of days?</p> <p>24 MR. OXFORD: Object to the form.</p> <p>25 A. I believe that's what was said here.</p>	<p>1 D. McIsaac</p> <p>2 I don't -- I haven't read anything here, or I'd</p> <p>3 have to go back and read the whole thing, of</p> <p>4 what Barclays was saying why it would be</p> <p>5 critical for Barclays to get it done.</p> <p>6 Q. Do you believe that you are in a</p> <p>7 better position than the parties who were</p> <p>8 negotiating this deal and representing it to the</p> <p>9 court to determine the urgency of the closing of</p> <p>10 this transaction?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 A. No, I think the urgency was on</p> <p>13 Lehman's side, not necessarily on Barclays'</p> <p>14 side. Barclays, if they didn't feel they had</p> <p>15 done enough due diligence and didn't feel they</p> <p>16 had adequate time to review it, didn't have to</p> <p>17 go through with it at that point in time.</p> <p>18 Q. Would you agree that in a transaction</p> <p>19 where one party has an urgency to complete a</p> <p>20 deal and another party doesn't, that there is a</p> <p>21 disparity in bargaining power as between those</p> <p>22 two entities?</p> <p>23 MR. OXFORD: Objection.</p> <p>24 A. Yes, but I'm not sure which way. If I</p> <p>25 don't sell it, what happens? I'm out of</p>

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<p>1 D. McIsaac</p> <p>2 business. If I sell it, I'm still out of</p> <p>3 business.</p> <p>4 So if the parent company is selling</p> <p>5 the business or if the broker-dealer, they're</p> <p>6 selling the business, they have a decision to</p> <p>7 whether or not they sell it or not sell it. You</p> <p>8 know, this isn't a sale where I'm trying to sell</p> <p>9 something and, you know, just get rid of some</p> <p>10 bad assets and go on.</p> <p>11 Q. And we saw earlier that the OCC had</p> <p>12 threatened to liquidate LBI's accounts if it</p> <p>13 didn't close this transaction by the 22nd of</p> <p>14 September; is that right? Do you recall that?</p> <p>15 A. Yes, but the one thing the OCC said</p> <p>16 they would liquidate was that the customer and</p> <p>17 proprietary or just the customer -- just</p> <p>18 proprietary accounts?</p> <p>19 Q. Sure, we can look at the exhibit</p> <p>20 together. It was Exhibit 630.</p> <p>21 A. Uh-huh.</p> <p>22 Q. And it was on the second page under</p> <p>23 paragraph 3, and it says, "OCC would need to</p> <p>24 immediately liquidate and close out the LBI</p> <p>25 accounts, and is preparing to do so."</p>	<p>1 D. McIsaac</p> <p>2 A. Right, but I, after -- I don't</p> <p>3 remember which -- I think you showed me this and</p> <p>4 then you showed me something from the CME, and</p> <p>5 the CME just liquidated the proprietary</p> <p>6 accounts. It didn't liquidate the customers.</p> <p>7 Q. The OCC wasn't drawing a distinction</p> <p>8 in that, do you see that?</p> <p>9 A. Well, I don't know if they were -- it</p> <p>10 says "the accounts," so I'm assuming they meant</p> <p>11 all, but it looks like, you know, they could</p> <p>12 have drawn the same distinction that the CME did</p> <p>13 and just liquidate the proprietary business if</p> <p>14 they were concerned.</p> <p>15 Q. They could have?</p> <p>16 A. Yes.</p> <p>17 Q. But that's not what they're indicating</p> <p>18 in this paragraph, would you agree?</p> <p>19 A. That's not what it looks like the</p> <p>20 counsel was stating.</p> <p>21 Q. If the Lehman Trustee believed that a</p> <p>22 liquidation of the OCC accounts would result in</p> <p>23 a depletion of all of the posted margin, would</p> <p>24 it have been rational for the LBI Trustee to</p> <p>25 agree to transfer those accounts to Barclays in</p>
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<p>1 D. McIsaac</p> <p>2 exchange for the posted margin?</p> <p>3 MR. OXFORD: Objection to the form.</p> <p>4 Assumes facts not in evidence.</p> <p>5 A. If they looked at it and I guess</p> <p>6 assumed that they would lose whatever the number</p> <p>7 was, let's say \$2 billion, or transferred</p> <p>8 something like \$2 billion, yes, it would make, I</p> <p>9 guess, sense to do it or, you know, if there was</p> <p>10 a better good to be had by it, but I don't know</p> <p>11 if that analysis was done. You said it was a</p> <p>12 very short time, so I'm not sure if they had</p> <p>13 time to analyze that.</p> <p>14 Q. If you turn in your report to page 6,</p> <p>15 you say in paragraph 18 that, "In addition to</p> <p>16 the net asset value, I would expect a purchaser</p> <p>17 to pay a premium based on the anticipated</p> <p>18 earnings of the clearing business." Do you see</p> <p>19 that?</p> <p>20 A. Uh-huh.</p> <p>21 Q. Would you continue to have that</p> <p>22 expectation in a circumstance in which there was</p> <p>23 only one purchaser willing to acquire a</p> <p>24 business?</p> <p>25 A. I would guess their negotiating powers</p>	<p>1 D. McIsaac</p> <p>2 would not be the same, but I would still expect</p> <p>3 some payment for an ongoing business that was</p> <p>4 going to reap benefits for the purchaser.</p> <p>5 Certainly the purchaser would want to get it for</p> <p>6 nothing. I think the seller would want to get</p> <p>7 some value for the assets they were selling.</p> <p>8 Q. But as you said, if the seller</p> <p>9 believed that it wasn't going to get value in</p> <p>10 the alternative, then it would have been</p> <p>11 rational to sell it for nothing in order to</p> <p>12 preserve the customer positions; is that right?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. I don't think I said that.</p> <p>15 I'm sorry, could you read back my -- I</p> <p>16 don't think I said that.</p> <p>17 Q. Earlier I asked you the question: "If</p> <p>18 the Lehman Trustee believed that a liquidation</p> <p>19 of the OCC accounts would result in a depletion</p> <p>20 of all of the posted margin, would it have been</p> <p>21 rational for the LBI Trustee to agree to</p> <p>22 transfer those accounts to Barclays in exchange</p> <p>23 for the posted margin?" And you said, "If they</p> <p>24 looked at it and I guess assumed that they would</p> <p>25 lose whatever the number was, let's say \$2</p>

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<p>1 D. McIsaac</p> <p>2 billion, or transferred something like \$2</p> <p>3 billion, yes, it would make, I guess, sense to</p> <p>4 do it or, you know, if there was a better good</p> <p>5 to be had by it, but I don't know if that</p> <p>6 analysis was done."</p> <p>7 A. Yes.</p> <p>8 Q. You also said, just for the sake of</p> <p>9 completeness, you said it was a very short time</p> <p>10 so I'm not sure if they had time to analyze</p> <p>11 that.</p> <p>12 A. The Trustee in that case.</p> <p>13 Q. Yes.</p> <p>14 A. Yes.</p> <p>15 Q. So the question and answer that I just</p> <p>16 asked you was, earlier I asked you the question,</p> <p>17 if the Lehman Trustee believed that a</p> <p>18 liquidation of the OCC accounts would result in</p> <p>19 a depletion of all of the posted margin, would</p> <p>20 it have been rational for the LBI Trustee to</p> <p>21 agree to transfer those accounts to Barclays in</p> <p>22 exchange for the posted margin, and you said</p> <p>23 that if they looked at it and, I guess, assumed</p> <p>24 that they would loose whatever the number was</p> <p>25 and so on.</p>	<p>1 D. McIsaac</p> <p>2 A. Right.</p> <p>3 MR. OXFORD: Hold on. Hold on. Is</p> <p>4 there a question? You just have been</p> <p>5 reading from the record, Trish, which you're</p> <p>6 free to do, but if you could ask Mr. McIsaac</p> <p>7 a question, then he could answer it. I</p> <p>8 think that's the traditional way to go.</p> <p>9 Q. If the Lehman Trustee believed that a</p> <p>10 liquidation of the OCC account would result in a</p> <p>11 depletion of all of the posted margin, would it</p> <p>12 have been rational for the LBI Trustee to agree</p> <p>13 to transfer those accounts to Barclays in</p> <p>14 exchange for that margin?</p> <p>15 MR. OXFORD: Objection. Asked and</p> <p>16 answered.</p> <p>17 You can answer it again.</p> <p>18 A. I think I answered that question. You</p> <p>19 posed another question when you went back to</p> <p>20 read that.</p> <p>21 Q. Unfortunately, I'm not able to find it</p> <p>22 online.</p> <p>23 A. Okay. That's the question you asked</p> <p>24 that I didn't think was the same as that</p> <p>25 question.</p>
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<p>1 D. McIsaac</p> <p>2 Q. Are acquirers, in your experience,</p> <p>3 generally willing to pay a premium if they are</p> <p>4 the only potential acquirer for a business and</p> <p>5 they know that going into a negotiation?</p> <p>6 MR. OXFORD: Objection to the form.</p> <p>7 A. I haven't been in negotiations where</p> <p>8 that would be the case, but you still would</p> <p>9 expect to pay some value for getting value. I</p> <p>10 would think the seller would want some value.</p> <p>11 Q. But a premium is valued -- what do you</p> <p>12 define a premium to mean?</p> <p>13 MR. OXFORD: Object to the form.</p> <p>14 A. In my experience, you bought</p> <p>15 businesses and paid a premium based on how much</p> <p>16 you believe that that business will earn for you</p> <p>17 over the next few years, and then that's the</p> <p>18 base price plus you pay the net asset value of</p> <p>19 the business you're buying if you're just buying</p> <p>20 bits and pieces of the business.</p> <p>21 So you pay a premium based on, you</p> <p>22 know, potential benefits to your firm. I</p> <p>23 believe in some of the pages I was reading</p> <p>24 through here in the futures world, I think</p> <p>25 people doing the due diligence believed that</p>	<p>1 D. McIsaac</p> <p>2 they would make \$250 million in revenues over</p> <p>3 the next year. So there's a lot of value there,</p> <p>4 so maybe they saw value where other people</p> <p>5 didn't.</p> <p>6 Q. And would a reasonable -- would a</p> <p>7 rational acquirer be willing to pay premium if</p> <p>8 it believed paying a premium wasn't necessary to</p> <p>9 close the deal?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 A. I would assume they would try to get</p> <p>12 value for nothing if they could. So if you're</p> <p>13 saying would they pay a premium if they didn't</p> <p>14 have to, that would be negotiated and whether or</p> <p>15 not the seller would be willing to sell it for</p> <p>16 that price.</p> <p>17 Q. Can you turn to page 23 of your</p> <p>18 report, please? Actually, if you could start at</p> <p>19 page 22. I'd like to ask you some questions</p> <p>20 about paragraphs 44 -- 54 and 55.</p> <p>21 (Document review.)</p> <p>22 A. Okay.</p> <p>23 Q. In these two paragraphs you're talking</p> <p>24 about the proprietary options positions that LBI</p> <p>25 held in accounts at the OCC; is that right?</p>

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<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. At the end of paragraph 55, you say,</p> <p>4 "Certainly a rational seller would not include</p> <p>5 margin in a deal unless it was being compensated</p> <p>6 dollar for dollar." Do you see that?</p> <p>7 A. Uh-huh.</p> <p>8 Q. Can you explain what you mean by</p> <p>9 "compensated dollar for dollar"?</p> <p>10 A. They were giving other assets and I</p> <p>11 would assume they would be compensated for the</p> <p>12 assets. So if the value of the assets they were</p> <p>13 giving was \$100, I would expect them to be</p> <p>14 compensated \$100.</p> <p>15 The deal was to buy the portfolio of</p> <p>16 assets, not the margin that's posted to make</p> <p>17 sure that the firm complies with its obligations</p> <p>18 to the OCC.</p> <p>19 Q. So if there was, for example, a</p> <p>20 billion dollars in the proprietary options</p> <p>21 account posted as margin with the OCC, you</p> <p>22 believe that it would have been irrational for</p> <p>23 the Trustee to agree to transfer that account to</p> <p>24 Barclays for anything less than that same</p> <p>25 amount?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form of the</p> <p>3 question.</p> <p>4 A. I would expect the seller to look at</p> <p>5 the portfolio of assets that they were selling</p> <p>6 and to get the value for the portfolio of</p> <p>7 assets. So if they were selling long positions</p> <p>8 and short positions, I would expect them to get</p> <p>9 the net asset value for that, and if the buyer</p> <p>10 wanted the margin that was posted in addition, I</p> <p>11 would expect them to get the net asset value for</p> <p>12 the margin.</p> <p>13 Q. Just so that I understand your</p> <p>14 opinion, so if the positions in an account are</p> <p>15 worth negative a billion dollars on net, and the</p> <p>16 margin posted in an account were a billion</p> <p>17 dollars, are you suggesting that it would have</p> <p>18 been rational for the Trustee to transfer the</p> <p>19 account with the margin because they were</p> <p>20 offsetting positives and negatives?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 Misstates the witness's testimony.</p> <p>23 You can answer again.</p> <p>24 A. I think what I said is there was a</p> <p>25 portfolio of assets, and you would look at the</p>
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<p>1 D. McIsaac</p> <p>2 net asset value of the portfolio of assets,</p> <p>3 which was the long positions and the short</p> <p>4 positions. And I don't look at it just as the</p> <p>5 options positions, I'd look at it as the whole</p> <p>6 inventory positions that they were purchasing,</p> <p>7 and they would pay value for what they were</p> <p>8 buying. If you were to include the posted</p> <p>9 margin, I would expect to pay extra value for</p> <p>10 that.</p> <p>11 Q. Dollar-for-dollar extra value?</p> <p>12 A. That's where I would start at least,</p> <p>13 yes.</p> <p>14 Q. Would it be irrational to accept</p> <p>15 anything less than dollar-for-dollar</p> <p>16 compensation for the posted margin?</p> <p>17 MR. OXFORD: Object to the form.</p> <p>18 A. That would be at the point in time you</p> <p>19 would negotiate what you want to sell it for. I</p> <p>20 would think it would be a negotiating point and</p> <p>21 it would be expressed in the contracts what you</p> <p>22 were buying and what you were receiving and how</p> <p>23 much you were paying for it.</p> <p>24 Q. Would it be rational for LBI to</p> <p>25 negotiate for compensation less than</p>	<p>1 D. McIsaac</p> <p>2 dollar-for-dollar compensation for the posted</p> <p>3 margin?</p> <p>4 MR. OXFORD: Objection to the form.</p> <p>5 A. I don't think so, because if they were</p> <p>6 getting net asset value, then you'd be almost</p> <p>7 providing the downside protection for the</p> <p>8 acquirer.</p> <p>9 Q. And the net asset value in the terms</p> <p>10 of this transaction was what?</p> <p>11 MR. OXFORD: Object to the form.</p> <p>12 A. I believe there was 40 something</p> <p>13 billion dollars of assets, less than that in a</p> <p>14 repo liability that was assumed by Barclays, I</p> <p>15 guess, and the long option value that I thought</p> <p>16 was about \$300 million.</p> <p>17 Q. So you are excluding from your</p> <p>18 equation the negative value of the LBI affiliate</p> <p>19 positions that were in the firm account at the</p> <p>20 OCC?</p> <p>21 A. I believe they weren't buying the</p> <p>22 affiliates business. That's what I've seen. So</p> <p>23 I thought they were negotiating to buy LBI's</p> <p>24 business and not the affiliates positions.</p> <p>25 Q. They were taking settlement</p>

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<p>1 D. McIsaac</p> <p>2 responsibility for the affiliate positions as</p> <p>3 well, you agree with that?</p> <p>4 A. From the TAA, yes.</p> <p>5 Q. Where do you think Barclays was going</p> <p>6 to turn to recover the losses on the short</p> <p>7 affiliate positions in that account?</p> <p>8 MR. OXFORD: Object to the form.</p> <p>9 A. I don't know where they would turn.</p> <p>10 I'm not sure why they would have assumed them.</p> <p>11 Q. You saw that they assumed settlement</p> <p>12 responsibility for all of the positions at the</p> <p>13 OCC, correct?</p> <p>14 A. I see that they assumed it, yes.</p> <p>15 Q. Okay. Would it have been rational for</p> <p>16 Barclays to assume settlement responsibility for</p> <p>17 those positions knowing that LBI was in SIPC</p> <p>18 proceedings and would not be able to reimburse</p> <p>19 it for the costs of liquidating those positions?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 A. I think it would have been rational to</p> <p>22 negotiate what you were doing with those</p> <p>23 positions and, if you had to take over clearance</p> <p>24 and settlement of them, negotiate how you were</p> <p>25 going to be remunerated for that.</p>	<p>1 D. McIsaac</p> <p>2 Q. Would it be rational for the Trustee</p> <p>3 to agree to transfer the posted margin that</p> <p>4 secured those positions in exchange for Barclays</p> <p>5 taking on the exposure for those positions?</p> <p>6 MR. OXFORD: Objection to the form.</p> <p>7 Asked and answered.</p> <p>8 You can answer again.</p> <p>9 A. I don't think it would have been to</p> <p>10 transfer \$2 billion of margin to cover a</p> <p>11 billion-dollar loss. I don't think you would</p> <p>12 transfer that much, no.</p> <p>13 Q. How about 1 billion, would that have</p> <p>14 been rational for the Trustee to transfer?</p> <p>15 A. It might have been.</p> <p>16 MR. OXFORD: Object to the form.</p> <p>17 THE WITNESS: Sorry.</p> <p>18 Q. It might have been?</p> <p>19 A. It might have been. At that point in</p> <p>20 time, if they negotiated it and -- and, you</p> <p>21 know, that's what the parties decided.</p> <p>22 Q. So it's not your opinion that it would</p> <p>23 have been irrational under any circumstances for</p> <p>24 Lehman or the LBI Trustee to transfer posted</p> <p>25 margin to Barclays in exchange for taking</p>
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<p>1 D. McIsaac</p> <p>2 settlement responsibility for the affiliate</p> <p>3 positions; is that right?</p> <p>4 MR. OXFORD: Object to the form.</p> <p>5 A. I believe in my report I talked about</p> <p>6 the proprietary positions. If they're assuming</p> <p>7 affiliate clearance and settlement of affiliates</p> <p>8 positions, that would be something they should</p> <p>9 negotiate. You know, the parties there would</p> <p>10 negotiate it and whatever they thought was valid</p> <p>11 would be valid.</p> <p>12 Would it be out of the realm to say,</p> <p>13 yes, give me the market value of that? No.</p> <p>14 Q. Would that be a rational resolution,</p> <p>15 to give them the market value of that?</p> <p>16 MR. OXFORD: Object to the form.</p> <p>17 A. It would be rational to say this is</p> <p>18 the cost of it, sure, or, you know, we'll</p> <p>19 liquidate it, leave it in -- don't take those</p> <p>20 positions, don't take that account.</p> <p>21 I'm sure it could have been negotiated</p> <p>22 with the OCC to transfer the customer accounts</p> <p>23 separate from the proprietary accounts if that</p> <p>24 was -- if that was everybody's desire.</p> <p>25 Q. If you could turn -- I'm showing you</p>	<p>1 D. McIsaac</p> <p>2 what has been marked as Exhibit 687.</p> <p>3 (Exhibit 687, Trustee's Memorandum in</p> <p>4 Further Support of His Motion for Relief</p> <p>5 Pursuant to the Sale Orders or,</p> <p>6 Alternatively, For Certain Limited Relief</p> <p>7 under Rule 60(B) and in Opposition to the</p> <p>8 Motion of Barclays Capital Inc. to Enforce</p> <p>9 the Sale Orders and Secure Delivery of all</p> <p>10 Undelivered Assets, marked for</p> <p>11 identification, as of this date.)</p> <p>12 Q. If you could turn to page 60. In</p> <p>13 paragraph 136, the last two sentences, the</p> <p>14 Trustee says in his brief, "For example, LBI</p> <p>15 could have agreed to transfer to Barclays the</p> <p>16 minimum margin assets that the OCC required to</p> <p>17 secure LBI's liabilities to the OCC for LBI's</p> <p>18 proprietary positions. Such a transfer arguably</p> <p>19 would have cost LBI little because, in any</p> <p>20 event, LBI could not have withdrawn the minimum</p> <p>21 margin assets required by the OCC to secure</p> <p>22 LBI's open positions." Do you see that?</p> <p>23 A. Yes, I do.</p> <p>24 Q. Do you agree with that statement?</p> <p>25 A. Can I read the whole two paragraphs?</p>

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<p>1 D. McIsaac</p> <p>2 Q. Uh-huh.</p> <p>3 (Document review.)</p> <p>4 MR. OXFORD: Okay. And Mr. McIsaac,</p> <p>5 you should feel free, of course, not to just</p> <p>6 read those paragraphs, but the whole of the</p> <p>7 section to which Ms. Bloomer directs you.</p> <p>8 (Document review continues.)</p> <p>9 A. Okay. Now, I'm sorry, I've read it</p> <p>10 now, so ...</p> <p>11 Q. Okay. Directing you again to the last</p> <p>12 two sentences of paragraph 136, do you agree</p> <p>13 with the statement that, "LBI could have agreed</p> <p>14 to transfer the minimum margin assets that OCC</p> <p>15 required to secure all of the liabilities to the</p> <p>16 OCC for LBI's proprietary positions"?</p> <p>17 A. In context, it says, for example, they</p> <p>18 could have done it. They have also said that it</p> <p>19 could have been negotiated, so this was just one</p> <p>20 example of things that could have occurred.</p> <p>21 Q. And in the next sentence, it says,</p> <p>22 "Such a transfer arguably would have cost LBI</p> <p>23 little because, in any event, LBI could not have</p> <p>24 withdrawn the minimum margin assets required by</p> <p>25 the OCC to secure LBI's open positions." Do you</p>	<p>1 D. McIsaac</p> <p>2 see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you agree with that?</p> <p>5 A. In the context here, yes.</p> <p>6 Q. What do you mean in the context here?</p> <p>7 A. There's four paragraphs here</p> <p>8 explaining things they could have been done if</p> <p>9 it was negotiated. All I've said all along is</p> <p>10 this was something that should have been</p> <p>11 negotiated and decided upon by the parties prior</p> <p>12 to consummating the trade of the sale.</p> <p>13 Q. You said that the Trustee would have</p> <p>14 been irrational to agree to transfer the posted</p> <p>15 margin for anything less than dollar for dollar,</p> <p>16 isn't that right?</p> <p>17 A. For the proprietary --</p> <p>18 MR. OXFORD: Object to the form.</p> <p>19 Misstates the witness's testimony.</p> <p>20 You can answer.</p> <p>21 A. I was talking about proprietary</p> <p>22 assets. I don't know if this was talking about</p> <p>23 all the proprietary assets. The proprietary</p> <p>24 assets at the OCC, my understanding, were net</p> <p>25 long positions.</p>
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<p>1 D. McIsaac</p> <p>2 Q. This says that the transfer would have</p> <p>3 cost -- would arguably have cost LBI little</p> <p>4 because LBI could not have withdrawn the minimum</p> <p>5 margin assets required by the OCC to secure</p> <p>6 LBI's open positions.</p> <p>7 Could the Trustee have withdrawn the</p> <p>8 minimum margin requirements required by the OCC</p> <p>9 to secure the affiliate positions in the firm</p> <p>10 account?</p> <p>11 A. No, I do not believe so. Because</p> <p>12 they're in the account, they could not withdraw</p> <p>13 any of the minimum margin requirements.</p> <p>14 Q. Could LBI have withdrawn the minimum</p> <p>15 margin assets required by the OCC to secure</p> <p>16 LBI's customer accounts?</p> <p>17 MR. OXFORD: Object to the form. Do</p> <p>18 you have a specific timeframe in mind,</p> <p>19 Trish?</p> <p>20 MS. BLOOMER: No, I don't.</p> <p>21 A. I don't think they could have</p> <p>22 withdrawn any of the minimum margin requirements</p> <p>23 at that point in time.</p> <p>24 Q. For the customer accounts either?</p> <p>25 A. For the customer accounts or the</p>	<p>1 D. McIsaac</p> <p>2 proprietary accounts.</p> <p>3 Q. Outside of the OCC, could LBI have</p> <p>4 withdrawn the minimum margin assets required by</p> <p>5 other clearing organizations or clearing brokers</p> <p>6 to secure LBI's open positions?</p> <p>7 A. When you say "outside the OCC," what</p> <p>8 are you referring to? A little bit -- it's a</p> <p>9 very broad statement outside --</p> <p>10 Q. Sure. I'll give an example. Your</p> <p>11 understanding -- do you understand that LBI had</p> <p>12 a customer account open at the CME at the time</p> <p>13 the transaction closed?</p> <p>14 A. Yes.</p> <p>15 Q. Okay. Could LBI have withdrawn the</p> <p>16 minimum margin assets required by the CME to</p> <p>17 secure LBI's customer accounts?</p> <p>18 A. No.</p> <p>19 I'm sorry.</p> <p>20 MR. OXFORD: Sorry. Withdrawn.</p> <p>21 A. No.</p> <p>22 Q. And at any other place where there</p> <p>23 were open customer or proprietary accounts could</p> <p>24 LBI have withdrawn the minimum margin assets</p> <p>25 required to secure those open positions?</p>

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<p>1 D. McIsaac</p> <p>2 A. I don't believe they could have.</p> <p>3 You're making it broad, so I don't want to make</p> <p>4 a general statement, but my understanding, no,</p> <p>5 they could not have. But it didn't mean they</p> <p>6 had to give them away either.</p> <p>7 Q. Okay. The sentence says that "a</p> <p>8 transfer arguably would have cost little because</p> <p>9 LBI could not have withdrawn the minimum margin</p> <p>10 assets required to secure the positions."</p> <p>11 Would you agree that that same</p> <p>12 sentence applies not just to proprietary, but to</p> <p>13 any accounts for which LBI could not withdraw</p> <p>14 the minimum margin assets required?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 You can answer.</p> <p>17 A. I would say the minimum margin</p> <p>18 requirements as it relates to the exposure of</p> <p>19 the positions would be transferred as long as</p> <p>20 they were not -- did not get adequate protection</p> <p>21 elsewhere. So in the second part where they</p> <p>22 talk about the customers' margin positions,</p> <p>23 the -- Barclays in the transfer of the</p> <p>24 customers' accounts I believe had adequate</p> <p>25 protection against the customers fulfilling</p>	<p>1 D. McIsaac</p> <p>2 their obligations. So, transferring those, they</p> <p>3 already got the margin that was provided by the</p> <p>4 customers to support that.</p> <p>5 Q. I'm showing you what has been marked</p> <p>6 as Exhibit 659A. If you could review the e-mail</p> <p>7 and the first attachment to the e-mail.</p> <p>8 Specifically, I would direct your attention to</p> <p>9 the first full paragraph on page 2 of the</p> <p>10 letter.</p> <p>11 (Document review.)</p> <p>12 A. You said the first two paragraphs,</p> <p>13 right?</p> <p>14 Q. I said the first full paragraph.</p> <p>15 A. I'm sorry, I read the first two, okay.</p> <p>16 Q. On page 2.</p> <p>17 A. Oh, on page 2. Okay. Sorry.</p> <p>18 (Document review.)</p> <p>19 A. Yes, okay, I've read those paragraphs</p> <p>20 that start "pursuant to."</p> <p>21 Q. Okay. Now, in this paragraph</p> <p>22 Barclays' counsel is writing to the CFTC about</p> <p>23 the customer accounts that LBI is going to be</p> <p>24 transferring. Do you understand that reference</p> <p>25 in the context of this letter to be referring to</p>
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<p>1 D. McIsaac</p> <p>2 the futures customer accounts?</p> <p>3 A. Yes.</p> <p>4 Q. The second sentence of that paragraph</p> <p>5 says, "Some of these accounts are accounts that</p> <p>6 contain no open commodity positions and accounts</p> <p>7 that are in deficit, within the meaning of</p> <p>8 Regulations 190.06(e)(1)(iv) and (v)," and then</p> <p>9 "17 C.F.R. Section 190.06(e)(1)(iv) and (v),</p> <p>10 respectively." Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. What do you understand this to mean</p> <p>13 when it says that "some of these accounts are</p> <p>14 accounts that are in deficit"?</p> <p>15 A. That would be accounts that had -- you</p> <p>16 had a receivable from the customer that exceeded</p> <p>17 any assets he had on deposit with you as the</p> <p>18 firm.</p> <p>19 Q. Okay. And you said in the answer to</p> <p>20 the last question that Barclays had adequate</p> <p>21 protection against the customers fulfilling</p> <p>22 their obligations. Were you assuming that the</p> <p>23 customer margin accounts were not in deficit?</p> <p>24 A. Are we talking about in the futures</p> <p>25 sense?</p>	<p>1 D. McIsaac</p> <p>2 Q. Uh-huh.</p> <p>3 A. In the futures sense, even if you're</p> <p>4 in deficit, the firm -- the FCM is required to</p> <p>5 make up that deficit to protect all the</p> <p>6 customers that are not in deficit. So they</p> <p>7 would have to lock up additional collateral.</p> <p>8 They're responsible for all the customers that</p> <p>9 they owe -- they have an obligation to where</p> <p>10 they owe them money or owe them net equity to</p> <p>11 cover them in their lockup. The deficits -- the</p> <p>12 customers or deficits, they would be required to</p> <p>13 top them off in the second secured calculation.</p> <p>14 Q. The customers would be required to --</p> <p>15 A. No, the firm would be required to top</p> <p>16 them off.</p> <p>17 Q. And if the firm was required to top</p> <p>18 off any deficits, is it your understanding that</p> <p>19 that would constitute customer property to which</p> <p>20 Barclays was entitled under the terms of this</p> <p>21 transaction even though it wasn't property</p> <p>22 deposited by any customer?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 A. The way the seg and secured</p> <p>25 calculation works, you have a requirement on the</p>

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<p>1 D. McIsaac</p> <p>2 top and you have where the assets are on the</p> <p>3 bottom. The requirement would add back to your</p> <p>4 requirement that deficit. So you'd be required</p> <p>5 to lock up all moneys owed to all customers.</p> <p>6 Q. Including money that the customers had</p> <p>7 not deposited?</p> <p>8 A. They would add it back.</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 Q. And when Barclays took over</p> <p>11 responsibility for these accounts, did it</p> <p>12 inherit those requirements?</p> <p>13 MR. OXFORD: I object to the form.</p> <p>14 A. Yes.</p> <p>15 Q. And if there were margin deficits in</p> <p>16 the customer accounts, what protection did</p> <p>17 Barclays receive in this transaction if it</p> <p>18 didn't receive any of the LBI assets that were</p> <p>19 held in those accounts, that were held in the</p> <p>20 customer's segregated and secured accounts?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 Misstates his testimony. Assumes facts not</p> <p>23 in evidence.</p> <p>24 THE WITNESS: I'm sorry, can I answer</p> <p>25 or --</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Yes.</p> <p>3 THE WITNESS: I'm sorry.</p> <p>4 Two things could have happened: They</p> <p>5 could have decided not to take the customers</p> <p>6 that were in deficit and had them</p> <p>7 liquidated, liquidated them on the spot, and</p> <p>8 they would have been topped up for that</p> <p>9 potential loss by the firm making sure that</p> <p>10 they covered the requirement which would</p> <p>11 have been all the obligations to customers.</p> <p>12 Q. I'm sorry, can you -- what was the</p> <p>13 second option? You said two things could have</p> <p>14 happened. I don't understand your answer. Can</p> <p>15 you --</p> <p>16 A. They could have decided not to take</p> <p>17 those customers.</p> <p>18 Q. Okay.</p> <p>19 A. Or, if they did take them, could have</p> <p>20 liquidated their positions and closed them out.</p> <p>21 Q. If there was a margin deficit, were</p> <p>22 they protected in the event of a liquidation to</p> <p>23 the full extent of the exposure on the</p> <p>24 positions?</p> <p>25 A. They would have --</p>
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<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object. Object to the</p> <p>3 form.</p> <p>4 A. Sorry. They would have had some</p> <p>5 minimal exposure from the time that the market</p> <p>6 closed on one day to the market opened on the</p> <p>7 next to liquidate the positions.</p> <p>8 Q. How do you know that the exposure is</p> <p>9 minimal if you don't know the size of the margin</p> <p>10 deficit?</p> <p>11 A. The positions are marked to market</p> <p>12 every day. You have protected all of the</p> <p>13 clients who have -- that you owe money to. You</p> <p>14 have locked up -- all of that money has been</p> <p>15 locked up. Then you go and you would liquidate</p> <p>16 those accounts.</p> <p>17 Whatever the cost is, because it's</p> <p>18 marked to market every day, you only have that</p> <p>19 fraction of from the time the market closed to</p> <p>20 the time the market opened and you were able to</p> <p>21 liquidate to lose any money on the liquidation.</p> <p>22 And you could make money on the liquidation.</p> <p>23 Q. But as the acquiring broker-dealer,</p> <p>24 isn't it true that you're only, in your opinion,</p> <p>25 under the structure of this transaction,</p>	<p>1 D. McIsaac</p> <p>2 entitled to the customer property that was held</p> <p>3 by LBI to secure those customer positions?</p> <p>4 A. And that customer property is what it</p> <p>5 would be locked up as assets pertaining to the</p> <p>6 customer. That's for the obligations of the</p> <p>7 customer. So you start out with your net</p> <p>8 customer balances, you add back any deficits</p> <p>9 that aren't fully secured, and that's your</p> <p>10 obligations to your customers. And that's what</p> <p>11 they would get in a transfer.</p> <p>12 Q. Okay. So they would get property in a</p> <p>13 customer's seg and secured account that wasn't</p> <p>14 necessarily a customer's property; is that</p> <p>15 right?</p> <p>16 A. No, it would be the customer's</p> <p>17 property. The customers gave you \$100. You'll</p> <p>18 return -- they -- you have to set aside that</p> <p>19 \$100 for the customers.</p> <p>20 Q. If the customer account is in a margin</p> <p>21 deficit, does that mean you have a receivable as</p> <p>22 opposed to actual cash in that account?</p> <p>23 A. Yes. And but for the customers that</p> <p>24 you owe moneys to, you have to lock up all of</p> <p>25 that money. So if a customer gives you \$100 and</p>

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<p>1 D. McIsaac</p> <p>2 another customer is in deficit for \$50, you have</p> <p>3 to lock up \$100. So you would be transferring</p> <p>4 all the assets that belong to the customers.</p> <p>5 You would then liquidate -- you would</p> <p>6 also transfer whatever assets the customer's in</p> <p>7 deficit because he may have securities -- he may</p> <p>8 have a receivable of \$20 and secured for \$10.</p> <p>9 You would have some security against it, but</p> <p>10 your exposure is only between the time of</p> <p>11 liquidation, from the close of the market to the</p> <p>12 open of the market to liquidate that account.</p> <p>13 Q. And that size of that exposure would</p> <p>14 depend on the quantity and size of the customer</p> <p>15 positions as well as the market volatility; is</p> <p>16 that right?</p> <p>17 A. It would depend on a lot of things.</p> <p>18 It also may be a very good receivable because</p> <p>19 maybe the customer went in deficit for a market</p> <p>20 move and he'll make -- he'll meet his call</p> <p>21 tomorrow morning.</p> <p>22 Q. If the customer positions were to, on</p> <p>23 net, drop in value between the day of the</p> <p>24 closing and the following day, is it fair to say</p> <p>25 that Barclays was exposed to the full risk of</p>	<p>1 D. McIsaac</p> <p>2 the amount of drop in value and did not receive</p> <p>3 protection against that risk from the customer</p> <p>4 property that it received?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 Assumes facts not in evidence.</p> <p>7 A. Are we talking about just the customer</p> <p>8 who's in deficit or are we talking about the</p> <p>9 whole customer?</p> <p>10 Q. Any customer.</p> <p>11 A. No, there would be no difference for</p> <p>12 the other customers because you have market</p> <p>13 movement and you make market calls. Customers</p> <p>14 are required to meet their margin calls every</p> <p>15 day. Usually, a firm will have excess margin</p> <p>16 there to cover themselves. If they lose money,</p> <p>17 they bring in money and you -- you use that</p> <p>18 money to pay the exchanges.</p> <p>19 Q. And that assumes that the customers</p> <p>20 are creditworthy and pay their margin calls; is</p> <p>21 that right?</p> <p>22 A. That assumes that the customers meet</p> <p>23 their margins calls. If they don't meet their</p> <p>24 margin call, you liquidate them.</p> <p>25 Q. Would you agree that credit risk is</p>
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<p>1 D. McIsaac</p> <p>2 more substantial in a volatile market?</p> <p>3 MR. OXFORD: Object to the form.</p> <p>4 A. I think credit risk is dependent on</p> <p>5 who your counterparties are. I believe, from</p> <p>6 what I saw in the due diligence done by the</p> <p>7 Barclays people, that it was mainly</p> <p>8 institutional customers that were in their</p> <p>9 futures business. Based on that, I would tend</p> <p>10 to think that they would be viable</p> <p>11 counterparties to meet their obligations.</p> <p>12 Q. Is credit risk greater in a recession</p> <p>13 than it is in a -- under stable market</p> <p>14 conditions?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. The credit risk is dependent on the</p> <p>17 customer and the positions they have. They</p> <p>18 could be betting that the market goes down and</p> <p>19 making a ton of money.</p> <p>20 So I don't know what the positions</p> <p>21 that the customers had, in what markets they</p> <p>22 were trading, and what effect that was happening</p> <p>23 at September 19 that would have affected</p> <p>24 individual customers' positions, you know, so</p> <p>25 there was I don't believe a recession on</p>	<p>1 D. McIsaac</p> <p>2 September 19, but I don't know.</p> <p>3 Q. Do you -- did you base your opinion on</p> <p>4 the understanding that there was not a recession</p> <p>5 as of September 19, 2008?</p> <p>6 A. It doesn't matter to me if there was</p> <p>7 or wasn't or if we were or were not in a</p> <p>8 recession. People pay their bills when they're</p> <p>9 in a recession and when there's not a recession.</p> <p>10 These are not individual customers, primarily.</p> <p>11 These are institutions, from what I've</p> <p>12 understood.</p> <p>13 Q. So it has no bearing on your opinion</p> <p>14 that the country was in a recession -- if the</p> <p>15 country were in fact in a recession at the time</p> <p>16 this transaction was negotiated?</p> <p>17 A. It would matter what the customers had</p> <p>18 and the positions they had and who the customers</p> <p>19 were.</p> <p>20 Q. Would it matter at all to your</p> <p>21 opinion, at all to your opinion, whether or not</p> <p>22 there was a recession at the time that this deal</p> <p>23 was negotiated in terms of assessing the risks</p> <p>24 associated with the transaction?</p> <p>25 A. You assess the risk of the customers</p>

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<p>1 D. McIsaac</p> <p>2 and the market environment at that point in time</p> <p>3 and the customer's position. I don't know if a</p> <p>4 recession has anything to do with the viability</p> <p>5 of a futures customer paying their margin</p> <p>6 requirements.</p> <p>7 Q. You just said you assess the risk of</p> <p>8 the customers and the market environment at that</p> <p>9 point in time. Are you agreeing that the market</p> <p>10 environment at that point in time is relevant to</p> <p>11 an assessment of the risks associated with a</p> <p>12 transaction of the type that Barclays</p> <p>13 consummated with Lehman Brothers in September of</p> <p>14 2008?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 A. The market environment in relation to</p> <p>17 the positions that the customers had on. If the</p> <p>18 market's going down and the customers were</p> <p>19 betting that the market is going to go down,</p> <p>20 they're not a credit risk. So you have to</p> <p>21 analyze the customers, the types of positions</p> <p>22 they are, their familiarity with the market, and</p> <p>23 your belief on where the market goes and whether</p> <p>24 or not you have adequate collateral.</p> <p>25 Q. Okay. I'm going to try to ask the</p>	<p>1 D. McIsaac</p> <p>2 question one more time, and if you could just</p> <p>3 answer the question that I'm asking.</p> <p>4 Would it matter at all to your opinion</p> <p>5 whether or not there was a recession at the time</p> <p>6 that this deal was negotiated in terms of</p> <p>7 assessing the risks associated with the</p> <p>8 transaction? Would that matter to your opinion?</p> <p>9 MR. OXFORD: Object to the form. It's</p> <p>10 been asked and answered a number of times.</p> <p>11 You can answer it again.</p> <p>12 A. I would not care if there was a</p> <p>13 recession in analyzing individual customer's</p> <p>14 ability to meet their obligations.</p> <p>15 Q. Thank you.</p> <p>16 MR. OXFORD: Trish, if you can let me</p> <p>17 know when you think it's a good time to</p> <p>18 break for lunch? It's 1.</p> <p>19 MS. BLOOMER: Just like five more</p> <p>20 minutes, if that's okay with everyone.</p> <p>21 MR. OXFORD: If it's okay with Mr.</p> <p>22 McIsaac, it's okay with me.</p> <p>23 MS. BLOOMER: Okay. Thanks.</p> <p>24 Q. Could you turn back in your expert</p> <p>25 report to page -- oh, I'm sorry. Could you turn</p>
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<p>1 D. McIsaac</p> <p>2 in the Trustee's brief, which was Exhibit --</p> <p>3 MR. OXFORD: 687.</p> <p>4 Q. 687.</p> <p>5 MS. BLOOMER: Thanks, Neil.</p> <p>6 Q. To page 60.</p> <p>7 A. Page 60.</p> <p>8 Q. We were talking earlier about the</p> <p>9 sentence in the Trustee's brief in which they</p> <p>10 say that a transfer to Barclays of the minimum</p> <p>11 margin assets required by the OCC to secure</p> <p>12 LBI's open positions would arguably have cost</p> <p>13 LBI little. Do you recall earlier discussing</p> <p>14 that?</p> <p>15 A. Yes.</p> <p>16 Q. Are you aware that the margin</p> <p>17 requirements at the OCC were shifting by \$500</p> <p>18 million a day during the week of September 15 on</p> <p>19 multiple days?</p> <p>20 MR. OXFORD: Objection to form.</p> <p>21 Misstates --</p> <p>22 A. I believe --</p> <p>23 MR. OXFORD: -- the record.</p> <p>24 A. Sorry.</p> <p>25 I believe you showed me a document</p>	<p>1 D. McIsaac</p> <p>2 that showed it going up and then drastically</p> <p>3 down on the 19th.</p> <p>4 Q. Perhaps we can look at that document.</p> <p>5 I believe it was the declaration of Craig Jones.</p> <p>6 A. Right, Exhibit 1.</p> <p>7 Q. In Exhibit 1.</p> <p>8 Do you recall that between the 15th</p> <p>9 and the 16th the margin requirement went up by</p> <p>10 over \$500 million, do you see that?</p> <p>11 A. Yes, I do.</p> <p>12 Q. And then between the 17th and 18th --</p> <p>13 well, between the 16th and the 17th it went up</p> <p>14 another 45 million or so dollars, do you see</p> <p>15 that?</p> <p>16 A. Uh-huh. Yes.</p> <p>17 Q. And then it goes up over \$600 million</p> <p>18 between the 17th and the 18th?</p> <p>19 A. Yes.</p> <p>20 Q. So between the 15th and the 18th, you</p> <p>21 see that the margin requirement increased by</p> <p>22 over \$1.2 billion?</p> <p>23 A. Yes, I see that.</p> <p>24 Q. Okay. And then it dropped by</p> <p>25 approximately \$400 million on that last day of</p>

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<p>1 D. McIsaac</p> <p>2 the week, do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Would it have been rational for the</p> <p>5 Trustee, assuming he was aware of the swings in</p> <p>6 the margin requirements, to believe that it</p> <p>7 would have arguably cost LBI little to transfer</p> <p>8 even more than the minimum margin assets given</p> <p>9 the risk that those margin requirements could</p> <p>10 increase dramatically over the following day</p> <p>11 after the transaction?</p> <p>12 MR. OXFORD: Object to the form.</p> <p>13 Assumes facts not in evidence.</p> <p>14 A. I believe you would have to assess</p> <p>15 what your exposure was there, assess whether or</p> <p>16 not the margin requirements might have been</p> <p>17 inflated by the OCC for whatever reason, and</p> <p>18 determine what your potential risk or what you</p> <p>19 think the risk is and negotiate from there.</p> <p>20 Q. Regardless of whether the OCC's margin</p> <p>21 requirements were inflated or what the reason</p> <p>22 for them was, you agree that LBI couldn't</p> <p>23 withdraw anything beyond -- anything that would</p> <p>24 bring the posted margin below the minimum margin</p> <p>25 assets required, right?</p>	<p>1 D. McIsaac</p> <p>2 A. Correct.</p> <p>3 Q. And you see that the margin</p> <p>4 requirements increased by \$1.2 billion in a</p> <p>5 matter of four days during the week of September</p> <p>6 15, correct?</p> <p>7 A. I see that they increased and then</p> <p>8 decreased.</p> <p>9 Q. Would it be rational for a seller, in</p> <p>10 light of these margin requirement movements,</p> <p>11 during the week of September 15, 2008, to</p> <p>12 believe that there was a risk that the margin</p> <p>13 requirements would increase again substantially</p> <p>14 on September 22 and September 23?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 Assumes facts not in evidence.</p> <p>17 A. In light of triple-witching day, I</p> <p>18 don't know if -- if LBI was putting on</p> <p>19 additional positions during the week or the</p> <p>20 positions that would close out on Friday would</p> <p>21 have -- what impact they would have on the</p> <p>22 margin requirement.</p> <p>23 I can't answer a question of where I</p> <p>24 think the margin requirement is going to go</p> <p>25 without having any idea what the positions were</p>
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<p>1 D. McIsaac</p> <p>2 and how they had them already covered. Maybe</p> <p>3 the margin requirement was on shorts that we had</p> <p>4 long positions already sitting in the account</p> <p>5 and they would have been covered.</p> <p>6 Q. Do you know how many positions were in</p> <p>7 the proprietary accounts at the OCC?</p> <p>8 MR. OXFORD: Object to the form. Do</p> <p>9 you have a particular day?</p> <p>10 MS. BLOOMER: On the 19th of</p> <p>11 September.</p> <p>12 A. I believe there were tens of thousands</p> <p>13 of positions in there that date that included</p> <p>14 the affiliates, subordinated affiliates</p> <p>15 accounts.</p> <p>16 Q. So if a Trustee were to want to</p> <p>17 assess -- or, if LBI, I apologize, were to want</p> <p>18 to assess the impact that the expiration weekend</p> <p>19 would have on the margin requirements, how long</p> <p>20 would it take the LBI -- LBI to conduct that</p> <p>21 analysis?</p> <p>22 MR. OXFORD: Object to the form.</p> <p>23 A. I would assume LBI, if their systems</p> <p>24 were like any other systems on the street, would</p> <p>25 have been able to analyze that fairly quickly.</p>	<p>1 D. McIsaac</p> <p>2 They -- they have risk systems that would</p> <p>3 quantify this and they would know what their</p> <p>4 exposure was as of close of business.</p> <p>5 MS. BLOOMER: I think this is probably</p> <p>6 a good time to take our break for lunch.</p> <p>7 MR. OXFORD: Okay. Thanks.</p> <p>8 THE VIDEOGRAPHER: The time is 1:05.</p> <p>9 This is the tape labeled number 3. We're</p> <p>10 going off the record.</p> <p>11 (Luncheon recess.)</p>

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<p>1 D. McIsaac</p> <p>2 AFTERNOON SESSION</p> <p>3 DANIEL McISAAC, resumed and</p> <p>4 testified further as follows:</p> <p>5 THE VIDEOGRAPHER: This is the start</p> <p>6 of tape labeled number 4. The time is 2:05.</p> <p>7 We're back on the record.</p> <p>8 EXAMINATION BY (Cont'd.)</p> <p>9 MS. BLOOMER:</p> <p>10 Q. Good afternoon.</p> <p>11 A. Good afternoon.</p> <p>12 Q. I'm showing you a document that's been</p> <p>13 marked as Exhibit 648. This is a declaration</p> <p>14 that was submitted by Eric Clark. Are you</p> <p>15 familiar with this declaration?</p> <p>16 A. I believe I've seen it, yes.</p> <p>17 Q. And did you see it preparing for your</p> <p>18 deposition today?</p> <p>19 A. I think I might have seen it, but I</p> <p>20 don't recall if it was in preparing or not. But</p> <p>21 I know I've seen the declaration.</p> <p>22 Q. Do you believe you saw it -- do you</p> <p>23 believe you saw it prior to when you submitted</p> <p>24 your expert report?</p> <p>25 A. Yes.</p>	<p>1 D. McIsaac</p> <p>2 Q. On exchange-traded derivatives issues?</p> <p>3 A. Yes.</p> <p>4 Q. Yes?</p> <p>5 A. Yes.</p> <p>6 Q. If you could turn to the second page,</p> <p>7 paragraph 6, and review that and let me know</p> <p>8 when you've had a chance to look at it.</p> <p>9 (Document review.)</p> <p>10 A. Yes.</p> <p>11 Q. Okay. In this paragraph, Mr. Clark</p> <p>12 says that the OCC options were not immediately</p> <p>13 brought onto Barclays' systems, as the systems</p> <p>14 were not capable of incorporating the LBI OCC</p> <p>15 options. Do you see that?</p> <p>16 A. Yes.</p> <p>17 Q. Do you have any reason to doubt the</p> <p>18 accuracy of that statement?</p> <p>19 A. No, I do not.</p> <p>20 Q. In the next sentence he says, "The</p> <p>21 delay in moving the options on the Barclays'</p> <p>22 systems created difficulties for Barclays' Risk</p> <p>23 Management Team in terms of their ability to</p> <p>24 manage the risk associated with these positions</p> <p>25 effectively during the interim period."</p>
Page 148	Page 149
<p>1 D. McIsaac</p> <p>2 Do you see that?</p> <p>3 A. Yes.</p> <p>4 Q. Do you have any reason to doubt the</p> <p>5 accuracy of that statement?</p> <p>6 A. No, I do not.</p> <p>7 Q. Have you seen anything in the record</p> <p>8 that suggests that Barclays did have the ability</p> <p>9 to manage the risk associated with these</p> <p>10 positions prior to the time it was able to</p> <p>11 incorporate them onto its system?</p> <p>12 MR. OXFORD: Object to the form.</p> <p>13 A. I believe I did see something where</p> <p>14 they were trying to risk-manage the positions</p> <p>15 for a period of time and then turned them back</p> <p>16 to the Lehman traders to manage the risk.</p> <p>17 Q. Okay. And do you believe that what</p> <p>18 you saw led you to conclude that that risk</p> <p>19 management during that period of time was</p> <p>20 effective?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 A. I don't know if I saw enough within</p> <p>23 that to determine if it was totally effective.</p> <p>24 Q. What would you consider to be an</p> <p>25 effective hedge program in terms of the</p>	<p>1 D. McIsaac</p> <p>2 relationship between losses on underlying</p> <p>3 positions, for example, and gains onto hedge</p> <p>4 positions?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 A. I would assume, having them roll up</p> <p>7 into a system, that you would be able to monitor</p> <p>8 both sides of the positions, be able to monitor</p> <p>9 the options as well as the equity into one</p> <p>10 straight -- one flow-through system, for lack of</p> <p>11 better words.</p> <p>12 Q. If Barclays were attempting to hedge a</p> <p>13 set of options positions, and those options</p> <p>14 positions lost \$500 million in value over a</p> <p>15 discrete period of time, would you consider an</p> <p>16 effective hedge if the hedge positions that</p> <p>17 Barclays placed only gained \$150 million during</p> <p>18 that same time?</p> <p>19 A. I don't know if their objective was to</p> <p>20 fully hedge the position. Most trading books do</p> <p>21 not fully hedge because then there would be no</p> <p>22 gain or loss unless you were just trying to play</p> <p>23 the -- the gain or loss when you put on the</p> <p>24 contract. So most traders don't fully hedge</p> <p>25 their positions.</p>

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<p>1 D. McIsaac</p> <p>2 But I don't know if that was</p> <p>3 effective. Their goal might have been to only</p> <p>4 hedge a portion of it.</p> <p>5 Q. Assuming their goal was to fully hedge</p> <p>6 the position, would you agree that a hedge that</p> <p>7 only gained \$150 million against underlying that</p> <p>8 lost \$500 million was an ineffective hedge?</p> <p>9 MR. OXFORD: Object to the form.</p> <p>10 Assumes facts not in evidence.</p> <p>11 A. If you were trying to hedge the entire</p> <p>12 portfolio and you put on hedges that didn't</p> <p>13 replicate it, that would have been an</p> <p>14 ineffective hedge.</p> <p>15 Q. If you would turn in your report to</p> <p>16 page 3 -- I'm sorry, page 4, sub-bullet 3 at the</p> <p>17 top of the page. It says there that, "Any</p> <p>18 ongoing market risk associated with the</p> <p>19 proprietary exchange-traded derivatives that</p> <p>20 Barclays acquired could be and was mitigated by</p> <p>21 Barclays by hedging these positions." Do you</p> <p>22 see that?</p> <p>23 A. Yes.</p> <p>24 Q. And then if you turn to page 7,</p> <p>25 paragraph 22, you say, "I would assume that the</p>	<p>1 D. McIsaac</p> <p>2 purchaser would have anticipated that the short</p> <p>3 exchange-traded derivatives positions would be</p> <p>4 hedged by certain long equity positions in LBI's</p> <p>5 total portfolio." Do you see that?</p> <p>6 A. Yes.</p> <p>7 Q. Are you familiar with the various</p> <p>8 trading strategies that a broker-dealer could</p> <p>9 undertake for a proprietary portfolio?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 A. Somewhat, yes, sure.</p> <p>12 Q. Are long equity positions the only</p> <p>13 positions that would interact with</p> <p>14 exchange-traded derivatives positions in terms</p> <p>15 of the full portfolio?</p> <p>16 MR. OXFORD: I'll object to the form</p> <p>17 of the question.</p> <p>18 A. Yes, I'm not sure really what the</p> <p>19 question is. I'm not sure what you're --</p> <p>20 Q. Is it possible that short</p> <p>21 exchange-traded derivatives positions would be</p> <p>22 hedged by anything other than long equity</p> <p>23 positions in a broker-dealer's portfolio?</p> <p>24 A. Yes.</p> <p>25 Q. Can you give me an example?</p>
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<p>1 D. McIsaac</p> <p>2 A. A short put might be hedged by a short</p> <p>3 position in a portfolio. A short option could</p> <p>4 be hedged by a long option. An index could</p> <p>5 hedge a portfolio of a basket of other options.</p> <p>6 Q. And could over-the-counter positions</p> <p>7 also be used to hedge exchange-traded</p> <p>8 derivatives positions?</p> <p>9 A. I would tend to think normal course</p> <p>10 would be to use exchange-traded derivatives to</p> <p>11 hedge over-the-counter derivatives.</p> <p>12 Q. Okay. And if you were to have</p> <p>13 purchased an exchange-traded derivatives</p> <p>14 position in order to hedge an over-the-counter</p> <p>15 position, would the acquirer of the</p> <p>16 exchange-traded derivatives position be</p> <p>17 considered to have a naked position in the event</p> <p>18 it didn't also acquire the corresponding</p> <p>19 over-the-counter derivative?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 A. I think if the question you're asking</p> <p>22 is if there was an over-the -- exchange-traded</p> <p>23 option hedging an over-the-counter position,</p> <p>24 that if you didn't assume the over-the-counter</p> <p>25 position, would that single exchange-traded</p>	<p>1 D. McIsaac</p> <p>2 option be naked? Unless you had something else</p> <p>3 in your portfolio that was hedging it or could</p> <p>4 be considered a hedge to it, yes.</p> <p>5 Q. Is it your understanding that Barclays</p> <p>6 was acquiring the over-the-counter derivatives</p> <p>7 of LBI in the September 2008 transaction?</p> <p>8 A. I do not believe they were.</p> <p>9 Q. Is it fair to say, then, that Barclays</p> <p>10 would have been reasonable in assuming that</p> <p>11 there may be unhedged exchange-traded</p> <p>12 derivatives positions in the portfolio it was</p> <p>13 acquiring?</p> <p>14 MR. OXFORD: Object to the form of the</p> <p>15 question. Assumes facts not in evidence.</p> <p>16 A. I don't know if there were</p> <p>17 over-the-counter derivatives in the -- in LBI's</p> <p>18 portfolio, nor do I know if they hedged them</p> <p>19 with exchange-traded derivatives. The --</p> <p>20 Q. Is it possible that they did?</p> <p>21 MR. OXFORD: Object to the form.</p> <p>22 A. Yes, it's possible that could have</p> <p>23 happened.</p> <p>24 Q. And if that was the case, would that</p> <p>25 position then not be fully hedged if you were</p>

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1 D. McIsaac
 2 taking the exchange-traded portfolio and not the
 3 over-the-counter portfolio?
 4 MR. OXFORD: Object to the form.
 5 Asked and answered.
 6 You can answer again.
 7 A. Unless there was another security or
 8 another transaction out there that that was
 9 hedging.
 10 Q. Okay. My question assumes that the
 11 position is hedging the over-the-counter
 12 position. Do you understand?
 13 A. Yes, but there could be another
 14 position that that would also act as a hedge
 15 for.
 16 Q. Do you -- does a broker-dealer
 17 typically put duplicative hedges on its
 18 portfolio?
 19 A. No. What I meant is they could be
 20 hedging this transaction. You take that
 21 transaction off, it may be now a hedge for a
 22 different security out there. All I'm saying
 23 is, in the realm things, it could be hedging
 24 another exposure.
 25 Q. Is it fair to say that you wouldn't

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1 D. McIsaac
 2 you do in order to determine the extent of the
 3 naked exposure on those exchange-traded
 4 derivatives in the event you weren't acquiring
 5 the over-the-counter derivatives?
 6 MR. OXFORD: Object to the form.
 7 Assumes facts not in evidence.
 8 You can answer.
 9 A. I would ask them what their portfolio
 10 of exchange-traded derivatives was that was
 11 hedging it, specific portfolio.
 12 Q. And would that require you to obtain
 13 information not only about the positions that
 14 were open in an exchange-traded derivatives
 15 account, but also the relationship between those
 16 positions and any over-the-counter positions?
 17 A. No, I would just ask for a list of the
 18 exchange-traded derivatives in his trading
 19 portfolio book.
 20 Q. And what would you do with that list?
 21 A. I would, I guess, determine if I want
 22 to buy those assets without the
 23 over-the-counters positions that they may or may
 24 not be hedging.
 25 Q. Would you also try to determine at the

1 D. McIsaac
 2 assume as an acquirer that you were getting a
 3 fully hedged portfolio if you were taking
 4 exchange-traded derivatives and not
 5 over-the-counter derivatives?
 6 MR. OXFORD: Object to the form. That
 7 assumes facts not in evidence.
 8 A. I wouldn't assume anything. I would
 9 inquire as to what I was purchasing and what the
 10 various books were, and if I had exchange-traded
 11 derivatives hedging an, you know, an
 12 over-the-counter derivative book, I would assume
 13 I'd find that out before I decided to buy the
 14 unhedged exchange-traded derivatives.
 15 Q. Okay. When you're -- if you were
 16 considering an acquisition of tens of thousands
 17 of exchange-traded derivatives positions, how
 18 would you go about determining whether or not
 19 those positions were hedged in full or in part
 20 by over-the-counter derivatives or vice-versa?
 21 A. I guess I'd ask the people who were
 22 managing the over-the-counter derivative book if
 23 they had exchange-traded derivatives in their
 24 portfolio.
 25 Q. And if the answer was yes, what would

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1 D. McIsaac
 2 same time whether there were equities positions
 3 that were hedging those positions?
 4 MR. OXFORD: Object to the form.
 5 Which positions are you talking about?
 6 Q. The exchange-traded derivatives
 7 positions that you were -- would be acquiring?
 8 MR. OXFORD: Okay. Same objection.
 9 You can answer.
 10 A. I thought we started this by saying if
 11 we had exchange-traded derivatives hedging an
 12 over-the-counter book, well, how would I
 13 determine that? And I think I said I would talk
 14 to the people managing that book. I would
 15 assume, and maybe that's a bad thing, I would
 16 probably ask them also what other positions do
 17 they have that's exchange-traded that is in the
 18 portfolio that I might be acquiring.
 19 Q. Okay. And you would want to analyze
 20 the relationships between the exchange-traded
 21 derivatives, the over-the-counter derivatives,
 22 and the other long and short positions in the
 23 portfolio that you were acquiring in order to
 24 understand the relationships between the various
 25 trades, is that fair?

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1 D. McIsaac
 2 MR. OXFORD: Object to the form.
 3 A. If I was not obtaining the
 4 over-the-counter derivatives and had no reason
 5 to know about them, I would try to assess the
 6 exchange-traded derivatives and the equity
 7 positions on the risk that it was -- that it
 8 would give me perhaps to take over those
 9 positions. I don't care what they did with the
 10 over-the-counter if I'm not assuming that.
 11 Q. Do you care what they did with the
 12 over-the-counter if the over-the-counter
 13 derivatives were related to the exchange-traded
 14 derivatives or the fixed equity positions that
 15 you were acquiring in terms of a hedge
 16 relationship?
 17 MR. OXFORD: Object to the form.
 18 A. Again, if I'm not acquiring the
 19 over-the-counter, why would I care their
 20 relationship to the exchange-traded that I was
 21 acquiring? I wouldn't care if it was a good
 22 hedge or not because I wasn't acquiring the
 23 over-the-counter.
 24 Unless you're saying that I, in the
 25 realm of possibility, I may decide to take over

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1 D. McIsaac
 2 you wanted based on the risk that you wanted in
 3 that book and where you thought your rewards
 4 were. You wouldn't, for every long position,
 5 have a corresponding short because then you
 6 wouldn't make any money.
 7 Q. Would you be qualified to do that
 8 assessment yourself if you were advising on a
 9 transaction of the type that Lehman and Barclays
 10 entered into in September of 2008?
 11 MR. OXFORD: Object to the form. I'm
 12 not sure it's clear what assessment you're
 13 asking about.
 14 MS. BLOOMER: He can ask me to clarify
 15 if he needs me to clarify, Neil.
 16 A. I don't know, when you say "assess,"
 17 what you mean by it.
 18 Q. You said you wouldn't for every long
 19 position have a corresponding short because you
 20 wouldn't make any money. You said you would
 21 determine what hedges you wanted based on the
 22 risk that you wanted in that book and where you
 23 thought your rewards were.
 24 Were you qualified -- are you
 25 qualified, do you consider yourself qualified to

1 D. McIsaac
 2 the over-the-counter positions.
 3 Q. Would you care if it was naked hedge
 4 that you were acquiring, a naked position -- I'm
 5 sorry.
 6 Would you care if it was a naked
 7 position that you were acquiring because you
 8 weren't getting the over-the-counter position?
 9 MR. OXFORD: Object to the form.
 10 A. I would analyze that just as any other
 11 position I was acquiring I would analyze.
 12 Q. You say on the top of page 8 in your
 13 expert report that, "Mr. Leitner appears to
 14 assume that Barclays was, at least at the start
 15 of the week, purchasing a book of business that
 16 was at least partly hedged."
 17 Is it your understanding that Barclays
 18 was acquiring a book of business that was partly
 19 hedged or that was fully hedged as of the
 20 beginning of the week?
 21 A. I don't know if I have an
 22 understanding one way or the other. I don't
 23 think anybody's business would be fully hedged,
 24 because if you're fully hedged, then you don't
 25 make money. So you would determine what hedges

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1 D. McIsaac
 2 make those types of assessments in the
 3 connection with a transaction of this type?
 4 MR. OXFORD: Objection to the form.
 5 A. What I was referring there is the
 6 trader who's trading that book would make that
 7 assessment. Firms have various people that
 8 monitor what the traders are doing and there are
 9 different risk managers that look at different
 10 risk.
 11 If you're asking me if I was long IBM
 12 and short a call on AT&T, could I assess the
 13 total risk on that, I would know that I have
 14 exposure on two sides and I'm not hedged. Could
 15 I tell you how much I could lose on each? No,
 16 but firms will have systems that do that.
 17 Lehman certainly had a system that did
 18 that because they were on -- they were a CSE
 19 firm so they certainly had value at risk and
 20 they did -- they did analysis of what their
 21 gains and losses were, and I'm -- what their
 22 gains and losses could be based on the value at
 23 risk, and I'm assuming that they had the
 24 wherewithal to determine that.
 25 Q. Do you have knowledge of how the

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<p>1 D. McIsaac</p> <p>2 process of assessing this risk and determining</p> <p>3 what positions you are taking over would consist</p> <p>4 of?</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 A. Again, you normally have a</p> <p>7 businessperson determine what risk appetite he</p> <p>8 had for his business and determine if the book</p> <p>9 of business that they were selling he wished to</p> <p>10 buy and it fit into his risk model.</p> <p>11 Q. Do you know how long it would take</p> <p>12 that person to do an analysis of the risk</p> <p>13 profile of a portfolio of exchange-traded</p> <p>14 derivatives and equities positions the size that</p> <p>15 Barclays was acquiring in September of 2008?</p> <p>16 A. I do not know how long it would take,</p> <p>17 but I would assume that the systems already in</p> <p>18 place at LBI would have spit that information</p> <p>19 out.</p> <p>20 Q. You think that you could hit a button</p> <p>21 and print that information out; is that your</p> <p>22 testimony?</p> <p>23 MR. OXFORD: Object to the form.</p> <p>24 Mischaracterizes the witness's testimony.</p> <p>25 You can answer.</p>	<p>1 D. McIsaac</p> <p>2 A. I believe Lehman had systems that</p> <p>3 provided them with value at risk on a daily</p> <p>4 basis.</p> <p>5 Q. And do those systems that provide</p> <p>6 value at risk on a daily basis tell you which</p> <p>7 positions are hedging which positions so that if</p> <p>8 you're not taking all of the positions, you know</p> <p>9 what's at risk?</p> <p>10 MR. OXFORD: Objection to the form.</p> <p>11 A. I don't believe it will earmark every</p> <p>12 naked position that's in the portfolio. It will</p> <p>13 tell you the portfolio and what the anticipated</p> <p>14 market movement could be in that portfolio.</p> <p>15 Q. And if there are multiple portfolios,</p> <p>16 and you're not taking all of them, would you</p> <p>17 agree that it's not as simple as pressing a</p> <p>18 button in order to determine the risk profile of</p> <p>19 the portfolio that you're taking over?</p> <p>20 MR. OXFORD: Object to the form.</p> <p>21 Mischaracterizes the witness's testimony.</p> <p>22 MS. BLOOMER: I'm asking him a</p> <p>23 question. I'm not characterizing anything.</p> <p>24 A. I would believe that the systems would</p> <p>25 enable the management of Lehman to assess the</p>
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<p>1 D. McIsaac</p> <p>2 risk at various levels, possibly down to the</p> <p>3 individual trader, but at a minimum probably</p> <p>4 down to the individual desk.</p> <p>5 Q. Was it -- maybe I misunderstood your</p> <p>6 testimony. Was it your testimony that the</p> <p>7 systems wouldn't have information other than the</p> <p>8 aggregate risk of a particular portfolio? So,</p> <p>9 in other words, wasn't it your testimony that</p> <p>10 the system wouldn't generate information that</p> <p>11 would tell you which positions are hedged by</p> <p>12 which other positions?</p> <p>13 A. I believe what I said, and if I said</p> <p>14 that, it's not what I meant to say, the system</p> <p>15 would analyze your risk on a portfolio basis.</p> <p>16 It may not at a top level spit out this position</p> <p>17 is not hedged. In the makeup of the risk</p> <p>18 matrix, it would give you information that you</p> <p>19 need to see.</p> <p>20 Q. What do you mean when you say "on a</p> <p>21 portfolio basis"?</p> <p>22 A. Well, on a trader level, on a desk</p> <p>23 level, whatever the firm prescribes to be a</p> <p>24 portfolio.</p> <p>25 Q. And could any one portfolio include</p>	<p>1 D. McIsaac</p> <p>2 both exchange-traded positions and</p> <p>3 over-the-counter positions?</p> <p>4 A. Sure.</p> <p>5 Q. And if the system were to spit out a</p> <p>6 report that showed the risk profile of a</p> <p>7 portfolio that contained both exchange-traded</p> <p>8 and over-the-counter derivatives, would that</p> <p>9 report tell you which of those positions were</p> <p>10 going to be naked in the event that the</p> <p>11 over-the-counter derivatives were not to be</p> <p>12 transferred with the exchange-traded positions?</p> <p>13 A. There would probably be reports in the</p> <p>14 system that would indicate all the individual</p> <p>15 securities that are in that system. It may not</p> <p>16 assess them separately as to the risk of that</p> <p>17 one position that's hedged because it may be</p> <p>18 looking to hedge on the total desk position, but</p> <p>19 you would have the analysis of what was owned</p> <p>20 and what the exposure was on that security.</p> <p>21 Q. Do you know that or you -- you said</p> <p>22 "probably." I would like to confirm. Do you</p> <p>23 know that or not?</p> <p>24 A. I would assume most risk systems would</p> <p>25 have that information. I did not look at</p>

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<p>1 D. McIsaac</p> <p>2 Lehman's system and I can't determine whether or</p> <p>3 not they did, but I'm assuming that during the</p> <p>4 due diligence somebody would have looked at</p> <p>5 that.</p> <p>6 Q. During what due diligence?</p> <p>7 A. Barclays' due diligence.</p> <p>8 Q. And how long did Barclays have to do</p> <p>9 that due diligence?</p> <p>10 MR. OXFORD: Object to the form.</p> <p>11 Asked and answered.</p> <p>12 You can answer again.</p> <p>13 A. I don't know how long Barclays had to</p> <p>14 do the due diligence. I assume they had enough</p> <p>15 time to do it or else they would not have</p> <p>16 entered into the transaction.</p> <p>17 Somebody, I'm assuming, made an</p> <p>18 assessment of the risk of what they were buying</p> <p>19 and determining whether or not it fit into what</p> <p>20 they were looking for and they could afford to</p> <p>21 take on that risk.</p> <p>22 Q. Could it be that they agreed to take</p> <p>23 on the risk because they believed they were</p> <p>24 getting protection of the posted margin at the</p> <p>25 clearing corporations, is that possible?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Object to the form.</p> <p>3 A. I can't go into what they thought they</p> <p>4 were getting and weren't getting. I cannot tell</p> <p>5 you what is in their mind and what they were</p> <p>6 getting and what they weren't getting.</p> <p>7 Q. Is it possible that the reason they</p> <p>8 agreed to take on these positions was not</p> <p>9 necessarily because they had the time to do all</p> <p>10 of the due diligence, but because they believed</p> <p>11 they were getting posted margin as protection</p> <p>12 against some portion of those risks?</p> <p>13 MR. OXFORD: Objection to the form.</p> <p>14 Q. Is that possible?</p> <p>15 A. Which positions? We've talked about</p> <p>16 the portfolio. We've talked about cash</p> <p>17 positions and exchange-traded derivatives.</p> <p>18 What positions are we looking for</p> <p>19 margin to protect?</p> <p>20 Q. Is it possible that Barclays agreed to</p> <p>21 take over Lehman's exchange-traded derivatives</p> <p>22 portfolio because it believed that it was</p> <p>23 getting the margin that was posted to secure</p> <p>24 those positions as protection against any risk</p> <p>25 that may exist due to the fact that those</p>
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<p>1 D. McIsaac</p> <p>2 positions may or may not be naked exposures?</p> <p>3 MR. OXFORD: Objection. Asked and</p> <p>4 answered.</p> <p>5 A. I don't know if I could assess what</p> <p>6 was in their mind on negotiating the deal and</p> <p>7 what they thought they were getting and weren't</p> <p>8 getting.</p> <p>9 Q. I'm asking you if it's possible that</p> <p>10 that's the reason that they agreed to go forward</p> <p>11 with the transaction --</p> <p>12 A. It is possible --</p> <p>13 Q. -- despite having not done the due</p> <p>14 diligence that they requested.</p> <p>15 A. It is possible that that was in their</p> <p>16 mind and they thought of that, yes.</p> <p>17 Q. Okay. In your review of the evidence</p> <p>18 in this case, did you see any indication that</p> <p>19 Barclays was arranging to post margin to the OCC</p> <p>20 or the various other clearing brokers and</p> <p>21 clearing organizations such that the margin</p> <p>22 requirements come Monday, September 22, would be</p> <p>23 satisfied in order to avoid a liquidation?</p> <p>24 A. I didn't see anything to the effect</p> <p>25 that they were preparing to do that, but I</p>	<p>1 D. McIsaac</p> <p>2 haven't reviewed all the documents that Barclays</p> <p>3 has in their possession as to the transaction.</p> <p>4 Q. If you were advising a company who was</p> <p>5 acquiring an exchange-traded derivatives</p> <p>6 portfolio, and you knew the closing was going to</p> <p>7 take place in a matter of days, would you be</p> <p>8 advising that company to start making</p> <p>9 arrangements to post the collateral if you</p> <p>10 didn't believe you were getting the collateral</p> <p>11 that had already been posted by the selling</p> <p>12 entity?</p> <p>13 A. Where would I advise them to post the</p> <p>14 collateral if they didn't buy anything as yet?</p> <p>15 I'm not sure what the question is. How would I</p> <p>16 advise them to post collateral? Post collateral</p> <p>17 where?</p> <p>18 Q. To arrange. Would you advise them to</p> <p>19 start arranging to post that collateral if you</p> <p>20 believed you weren't going to be getting the</p> <p>21 collateral that was already posted by the</p> <p>22 selling entity?</p> <p>23 A. How much time would I -- I don't think</p> <p>24 they would need a lot of time to arrange for</p> <p>25 collateral to post if they were a broker-dealer.</p>

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<p>1 D. McIsaac</p> <p>2 They had plenty of collateral that could have</p> <p>3 been posted if they needed to.</p> <p>4 Q. Are you aware of how many different</p> <p>5 clearing organizations and clearing brokers LBI</p> <p>6 traded in exchange-traded derivatives through?</p> <p>7 A. I believe they traded through the OCC,</p> <p>8 the CME in the U.S. I believe they cleared</p> <p>9 through other brokers for some of the other</p> <p>10 foreign businesses. I don't know what</p> <p>11 arrangements Barclays had with those entities</p> <p>12 already.</p> <p>13 Q. What is the typical practice of a</p> <p>14 clearing organization at the open of business on</p> <p>15 a given day if collateral is not posted</p> <p>16 sufficient to satisfy the margin requirements?</p> <p>17 MR. OXFORD: Objection. Form.</p> <p>18 A. I'm not sure what the question --</p> <p>19 could you sort of rephrase it so I understand</p> <p>20 what the question is?</p> <p>21 Q. Sure. If the OCC woke up on Monday</p> <p>22 morning and realized that there was no</p> <p>23 collateral posted in the OCC accounts that were</p> <p>24 held on behalf of LBI, what would the OCC have</p> <p>25 done?</p>	<p>1 D. McIsaac</p> <p>2 A. Well, I don't know how that could</p> <p>3 happen because I don't know how the collateral</p> <p>4 could come out. So I assume when they were</p> <p>5 taking over the positions, however they decided</p> <p>6 to move those positions into their</p> <p>7 infrastructure into their position, that they</p> <p>8 would make arrangements with the OCC to have the</p> <p>9 adequate collateral there.</p> <p>10 Sometimes you may transfer the</p> <p>11 collateral that's in the accounts already and</p> <p>12 then pay it back to the -- to the seller just as</p> <p>13 a means to do it efficiently.</p> <p>14 Q. And if you were advising an entity, a</p> <p>15 seller, to enter into that type of an</p> <p>16 arrangement, would you have something written</p> <p>17 into an agreement somewhere to provide for a</p> <p>18 true-up of that money?</p> <p>19 A. I would have something that explained</p> <p>20 what I was purchasing, and if I wasn't</p> <p>21 purchasing those assets, I might have something</p> <p>22 in there saying I'll return them or else. If</p> <p>23 I'm not paying for them, I'd be obliged to</p> <p>24 return them. I've done a deal before, we have</p> <p>25 moved those assets over and then paid them back</p>
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<p>1 D. McIsaac</p> <p>2 the next day. It was just the ease of moving it</p> <p>3 into the -- into the process of moving the</p> <p>4 exchange-traded derivatives over.</p> <p>5 Q. Would it be prudent as an advisor to a</p> <p>6 seller in that circumstance to have a</p> <p>7 documentation of the agreement that you would be</p> <p>8 getting back billions of dollars in collateral?</p> <p>9 MR. OXFORD: Objection to the form.</p> <p>10 Assumes facts not in evidence.</p> <p>11 You can answer.</p> <p>12 A. I would assume that as well as what</p> <p>13 you were purchasing would be in the agreement.</p> <p>14 Q. I'm showing you what has been marked</p> <p>15 as Exhibit 51. Oh, you already have a document</p> <p>16 that's Exhibit 51.</p> <p>17 If you look at paragraph 1(a), it says</p> <p>18 here, "For good and valuable consideration, the</p> <p>19 receipt and sufficiency of which are hereby</p> <p>20 acknowledged, Lehman hereby sells, assigns,</p> <p>21 transfers and sets over to Barclays, without</p> <p>22 recourse or without representation or warranty,</p> <p>23 all of Lehman's rights, title, interests,</p> <p>24 powers, privileges, remedies, obligations, and</p> <p>25 duties in, to, under, and in respect of the</p>	<p>1 D. McIsaac</p> <p>2 Account, as of the Effective Date including with</p> <p>3 respect to (i) the Clearing Fund deposit; (ii)</p> <p>4 all margin deposits held by OCC with respect to</p> <p>5 the account; (iii) all settlement obligations</p> <p>6 with regard to transactions in cleared accounts;</p> <p>7 and (iv) all rights and obligations in respect</p> <p>8 of exercises of options contracts and</p> <p>9 assignments of such exercises."</p> <p>10 Do you see that?</p> <p>11 A. Yes.</p> <p>12 Q. Do you agree that under this agreement</p> <p>13 the Trustee agreed -- authorized Lehman's sale</p> <p>14 of Lehman's rights in the margin deposits that</p> <p>15 were held at the OCC without recourse or</p> <p>16 representation of warranty?</p> <p>17 MR. OXFORD: I'll object to the form</p> <p>18 of the question. Calls for a legal</p> <p>19 conclusion.</p> <p>20 A. I don't think -- I'm not a lawyer, so</p> <p>21 I don't want to talk about it, but I don't think</p> <p>22 this is selling -- this is the sale agreement.</p> <p>23 This is an agreement just to transfer at the</p> <p>24 OCC, and I assume when they say hereby</p> <p>25 acknowledge for, you know, sufficiency, without</p>

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<p>1 D. McIsaac</p> <p>2 recourse, representation, whatever has happened,</p> <p>3 is in another agreement. This is not the</p> <p>4 binding sale agreement, I don't think.</p> <p>5 Q. This is a binding agreement, you</p> <p>6 realize that, right?</p> <p>7 MR. OXFORD: Objection to form. Calls</p> <p>8 for a legal conclusion.</p> <p>9 A. I think what I said is this is not a</p> <p>10 sale agreement.</p> <p>11 Q. Do you think that it's -- do you think</p> <p>12 that the language of this provision that we just</p> <p>13 looked at together suggests that Lehman was</p> <p>14 going to transfer the margin deposits held by</p> <p>15 the OCC to Barclays? Is that what you</p> <p>16 understand this language to mean?</p> <p>17 A. Yes.</p> <p>18 MR. OXFORD: Objection to form.</p> <p>19 Q. Do you think that -- do you think that</p> <p>20 that language is clear or do you think it's</p> <p>21 ambiguous in some way?</p> <p>22 MR. OXFORD: Objection to form.</p> <p>23 A. I think the language is clear as far</p> <p>24 as the OCC goes as to what is happening with the</p> <p>25 assets at the OCC.</p>	<p>1 D. McIsaac</p> <p>2 Q. Okay.</p> <p>3 A. It is not determining what</p> <p>4 compensation was paid or how the arrangements</p> <p>5 were made. All this is is between two</p> <p>6 counterparties who are at the clearing org.</p> <p>7 transferring their obligations from one to</p> <p>8 another.</p> <p>9 Q. So you assume that the sale agreement,</p> <p>10 for example, that was approved by the court</p> <p>11 suggests that the posted margin would be</p> <p>12 transferred and then this agreement would make</p> <p>13 sense to you; is that what you're saying?</p> <p>14 MR. OXFORD: Objection to form.</p> <p>15 Misstates the witness's testimony.</p> <p>16 You can answer.</p> <p>17 A. I think the sale agreement would</p> <p>18 denote what was being paid for the assets, not</p> <p>19 how they were being transferred.</p> <p>20 Q. And this would denote how it's being</p> <p>21 transferred?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 A. This would denote the authority for</p> <p>24 OCC to transfer it. You have a sale agreement</p> <p>25 and you may have another agreement on how you're</p>
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<p>1 D. McIsaac</p> <p>2 going to effectually move moneys back and forth.</p> <p>3 Usually you convert, do a conversion, and you'll</p> <p>4 have some documents that talk about how you're</p> <p>5 going to do that.</p> <p>6 Q. But the fact that it was going to be</p> <p>7 transferred, that is denoted in the TAA; is that</p> <p>8 right?</p> <p>9 MR. OXFORD: Objection. Form.</p> <p>10 A. This is a vehicle to move the Lehman</p> <p>11 option boxes at OCC into Barclays' name.</p> <p>12 Q. And that would include the margin</p> <p>13 deposits?</p> <p>14 A. I believe it includes everything</p> <p>15 that's denoted here, which is the margin</p> <p>16 deposits is part of it.</p> <p>17 Q. Okay. What do you understand "without</p> <p>18 recourse" to mean?</p> <p>19 MR. OXFORD: Objection. Form. Calls</p> <p>20 for a legal conclusion.</p> <p>21 You can answer.</p> <p>22 A. I'm not sure what it means in this</p> <p>23 case.</p> <p>24 Q. What do you generally understand the</p> <p>25 term "without recourse" to mean?</p>	<p>1 D. McIsaac</p> <p>2 A. I would guess there's no recourse to</p> <p>3 the OCC if something went wrong.</p> <p>4 Q. You don't think it may mean without</p> <p>5 recourse to Barclays for any of the money that</p> <p>6 Lehman is transferring to Barclays?</p> <p>7 MR. OXFORD: Objection. Form. Asked</p> <p>8 and answered. Calls for a legal conclusion.</p> <p>9 You can answer again.</p> <p>10 A. As I said, I think this means recourse</p> <p>11 to the OCC.</p> <p>12 Q. Is it possible that it means without</p> <p>13 recourse to anyone?</p> <p>14 MR. OXFORD: Objection. Calls for a</p> <p>15 legal conclusion.</p> <p>16 A. It's a legal document. I'll let the</p> <p>17 lawyers decide.</p> <p>18 Q. Okay. I'd like to go back in your</p> <p>19 report to page 23 again where you say that "a</p> <p>20 rational seller would not include margin in the</p> <p>21 deal unless it was being compensated dollar for</p> <p>22 dollar," do you see that?</p> <p>23 A. Could you point out what paragraph?</p> <p>24 I'm sorry.</p> <p>25 Q. Page 23 at the last --</p>

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<p>1 D. McIsaac</p> <p>2 A. Got it. Sorry.</p> <p>3 Q. You see that language?</p> <p>4 A. Uh-huh.</p> <p>5 Q. I'm handing you -- I'm going to mark</p> <p>6 it as an exhibit -- Exhibit 688.</p> <p>7 (Exhibit 688, Deposition of Bart</p> <p>8 McDade, marked for identification, as of</p> <p>9 this date.)</p> <p>10 Q. If you could turn with me to page 275.</p> <p>11 This is testimony of Bart McDade. Are you</p> <p>12 familiar with that name? Do you know who he is?</p> <p>13 A. I believe he might have been the</p> <p>14 president at Lehman Brothers, Inc.</p> <p>15 Q. Is it your understanding that he was</p> <p>16 involved in the negotiations of the transaction</p> <p>17 in September of 2008 between Lehman and</p> <p>18 Barclays?</p> <p>19 A. I believe he was, but I don't know if</p> <p>20 I've ever seen anything that said what his role</p> <p>21 was in it.</p> <p>22 Q. Okay. On page 275, starting at line</p> <p>23 3, Mr. McDade was asked: "Did you understand</p> <p>24 that, in addition to the long positions and the</p> <p>25 short positions that Lehman had at OCC, it also</p>	<p>1 D. McIsaac</p> <p>2 had additional cash and assets that were</p> <p>3 deposited as margin and also clearing funds</p> <p>4 deposited at the OCC?" Do you see that</p> <p>5 question?</p> <p>6 A. Yes.</p> <p>7 Q. Mr. McDade responds, "Yes, I did, but</p> <p>8 keep in mind the context that we had had assets</p> <p>9 like that, for example, at the CME and they lost</p> <p>10 those assets over the course of the week. So we</p> <p>11 had no confidence that those were potentially</p> <p>12 our assets given what had been transpiring."</p> <p>13 Do you see that?</p> <p>14 A. Yes.</p> <p>15 Q. What do you understand Mr. McDade to</p> <p>16 be suggesting in this testimony?</p> <p>17 MR. OXFORD: Objection. Form. Calls</p> <p>18 for speculation.</p> <p>19 A. I wouldn't want to try to guess what</p> <p>20 he's thinking.</p> <p>21 Q. Do you have any idea what he means</p> <p>22 when he's referring to the CME losing assets</p> <p>23 over the course of the week?</p> <p>24 A. I'm assuming based on what we said</p> <p>25 before that maybe he liquidated some of their</p>
Page 180	Page 181
<p>1 D. McIsaac</p> <p>2 assets. But this is a paragraph taken out of</p> <p>3 this page 275, so I don't know where it is in</p> <p>4 relation to what this question is referring to</p> <p>5 or where the background for it is.</p> <p>6 Q. You said the CME could have liquidated</p> <p>7 positions. Aren't you aware that the CME in</p> <p>8 fact did liquidate or auction off positions in</p> <p>9 LBI's account during the week of September 15?</p> <p>10 A. I said this could have been referring</p> <p>11 to that. I don't know if this is referring to</p> <p>12 that. I don't know what it's referring to.</p> <p>13 Q. Do you know of any other actions by</p> <p>14 the CME during that week that involved</p> <p>15 liquidation of positions?</p> <p>16 A. He doesn't say anything here about</p> <p>17 liquidation of positions. He just is referring</p> <p>18 to they lost assets.</p> <p>19 Q. Do you know of any instance other than</p> <p>20 the auction in which LBI lost assets in relation</p> <p>21 to the CME account?</p> <p>22 A. I don't know of any other reference</p> <p>23 anywhere else of them losing assets at the CME.</p> <p>24 Q. Mr. McDade says, "We had no confidence</p> <p>25 that those were potentially our assets given</p>	<p>1 D. McIsaac</p> <p>2 what had been transpiring," and he was saying in</p> <p>3 response to a question about assets, cash and</p> <p>4 assets, that were deposited as margin in its</p> <p>5 clearing funds deposited at the OCC.</p> <p>6 Do you understand Mr. McDade to be</p> <p>7 suggesting that the assets posted at the OCC</p> <p>8 were at risk?</p> <p>9 MR. OXFORD: Objection. Asked and</p> <p>10 answered.</p> <p>11 A. Again, I don't know if I can determine</p> <p>12 what Mr. McDade meant. There were a lot of</p> <p>13 assets mentioned above that. I'm not sure what</p> <p>14 he's referring to there. He might have been</p> <p>15 referring to long positions. I don't know.</p> <p>16 Q. Do you agree that Mr. McDade seemed to</p> <p>17 think that there were some assets at the OCC</p> <p>18 that were potentially not going to be available</p> <p>19 to Lehman and that he thought the CME example</p> <p>20 was evidence of that?</p> <p>21 A. I don't want to speculate what he</p> <p>22 meant by these words. I don't know really what</p> <p>23 he meant by these words.</p> <p>24 Q. Assuming Mr. McDade was referring to</p> <p>25 the loss of \$1.6 billion in assets at the CME on</p>

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1 D. McIsaac
2 September 18, and assuming for purposes of this
3 question that Mr. McDade was talking about the
4 margin and clearing funds deposited at the OCC
5 when he says they had no confidence that those
6 were potentially our assets, would you consider
7 it irrational for Mr. McDade to lack that
8 confidence?

9 MR. OXFORD: Objection to form.

10 MR. GREEN: Objection.

11 A. Again, I'm not sure what his lacking
12 of confidence is. The question is did you
13 understand that, in addition to the long
14 positions and short positions that Lehman had at
15 the OCC, it also had additional cash assets that
16 were deposited as margin, so the answer is --

17 Q. And my question assumed that the
18 assets in the answer that he gave was the assets
19 that were deposited as margin and clearing funds
20 at the OCC. So assuming that that's what the
21 assets were referring to, was it irrational for
22 Mr. McDade to lack confidence that those were
23 going to be available to Lehman?

24 MR. OXFORD: Objection. Form.

25 Assumes facts not in evidence.

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1 D. McIsaac
2 A. I would take action if I thought they
3 were going to liquidate them for me and probably
4 direct my people to liquidate them before the
5 OCC had a chance to liquidate them. So I would
6 be at my best possible advantage.

7 Q. Let's assume you had tens of thousands
8 of positions, and if you tried to liquidate them
9 all in a matter of a day, you would lose a
10 substantial amount of money on that liquidation.

11 A. Again --

12 MR. OXFORD: Hold on. Is there a
13 question?

14 MS. BLOOMER: Yes, there is, if I
15 could finish.

16 MR. OXFORD: Sure.

17 Q. Would it be rational for you to fear
18 that the OCC might liquidate those positions
19 before you would get a chance to?

20 MR. OXFORD: Okay. Can we just make
21 sure we have that question in mind before --

22 THE WITNESS: Sorry.

23 MR. OXFORD: -- Mr. McIsaac answers?

24 A. Could you just read back the whole --

25 Q. Let's assume you had tens of thousands

1 D. McIsaac

2 A. I mean, I -- I'm having a problem
3 answering the question only because I don't know
4 what he said in reference to and what the time
5 period was that this was talking -- even talking
6 about. I don't know if this is talking about
7 the sale or anything else. I'm reading one
8 paragraph.

9 It seems somehow that he's concerned
10 about that there was confidence in that
11 potential assets -- what is he saying? "So we
12 had no confidence that those were potentially
13 our assets given to what was transpiring." I
14 don't know what he means by that. Maybe he
15 thought he sold them already. I don't know.

16 Q. Okay. If you were involved in the
17 negotiations of this transaction on behalf of
18 Lehman and you had just seen the CME auction off
19 all of your proprietary positions and transfer
20 the margin that was posted at the CME to the
21 bidders who were willing to take those positions
22 over, and then the OCC started threatening to
23 liquidate your account, would you be concerned
24 that the same thing might happen?

25 MR. OXFORD: Objection. Form.

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1 D. McIsaac
2 of positions, and if you tried to liquid them
3 all in a matter of day, you would lose a
4 substantial amount of money on that liquidation.

5 Would it be rational for you to fear
6 that the OCC would liquidate those positions
7 before you would get a chance to?

8 MR. OXFORD: Objection. Form.

9 MR. KAY: Objection.

10 A. I don't know why you would fear that
11 they would be able to liquidate them before you
12 could liquidate them. I don't know why you
13 would have that fear. If you were afraid that
14 they were going to liquidate them, I would think
15 you would start liquidating your portfolio.

16 Q. If you thought the liquidation would
17 happen all in one day, would you be concerned
18 that that liquidation may cost you a substantial
19 amount of the margin you had posted in those
20 accounts?

21 MR. OXFORD: Objection. Form.

22 A. If I liquidated, it would cost me none
23 of the margin. It may cost me -- I may have
24 gains and losses in the liquidation, but at the
25 end of the day, if I liquidated everything, I

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2 would have no margin requirement.
3 Q. And the margin that was posted to
4 secure those positions in the event of a
5 liquidation would be accessible to the OCC,
6 correct, to cover any losses on that
7 liquidation?
8 MR. OXFORD: Objection. Form.
9 A. I thought you asked me if I was
10 liquidating them. If I was liquidating them,
11 no, they would give me back my margin.
12 Q. They would give you back your margin
13 after you had liquidated the positions and
14 settled any costs associated with that
15 liquidation, right?
16 A. Correct, any costs associated with the
17 OCC on the liquidation.
18 Q. Would they give you back your margin
19 before the positions were closed out and before
20 they had gotten protected themselves?
21 A. No, that's why I would be liquidating
22 them so that I could close out my account with
23 the OCC.
24 Q. Okay. And is there a risk that you
25 liquidated those positions and the cost of

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2 you move the market whether or not you could
3 liquidate them.
4 Q. Do you understand that there could be
5 a difference in the cost of liquidating them if
6 the market price changes throughout the course
7 of the day that you're conducting your
8 liquidation?
9 A. Yes. But what does that have to do
10 with me, my ability to liquidate them? You
11 asked me could I liquidate them? I said yes.
12 Q. And the cost of liquidating them would
13 be dependent upon the impact that the sales
14 would have on the market price of what you're
15 liquidating, isn't that right?
16 A. Yes.
17 Q. CME liquidated the positions when it
18 liquidated the proprietary account on September
19 18th in a single day.
20 Do you have any reason to think that
21 the OCC would not have taken the same approach?
22 MR. OXFORD: Objection. Form.
23 A. I'm not -- I don't understand what the
24 question is. We started out my saying that the
25 firm should liquidate. Now you're asking me

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2 liquidating the positions exceeds the margin
3 that you had posted to secure those positions?
4 MR. OXFORD: Objection. Asked and
5 answered.
6 A. I believe somebody would assess that
7 risk and determine what to do, and if they
8 thought the cost was going to exceed it, then if
9 it was liquidated, wouldn't they come back and
10 charge me for it anyway?
11 Q. How long would it take you to
12 liquidate tens of thousands of positions, do you
13 think? A day?
14 MR. OXFORD: Objection to form.
15 A. I have no idea.
16 Q. You have no idea?
17 A. I have no idea.
18 Q. Do you think it's likely that you
19 could liquidate tens of thousands of positions,
20 equities options positions in a day, without
21 substantially moving the market?
22 MR. OXFORD: Objection. Form. Asked
23 and answered. Assumes facts not evidence.
24 You can answer.
25 A. I don't know what the difference is if

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2 would the OCC liquidate.
3 Q. That's right. I'm asking you a
4 different question now.
5 A. Okay.
6 Q. Which is: If the OCC were to
7 liquidate, do you have any reason to think that
8 they wouldn't have conducted that liquidation in
9 the same manner in which the CME did?
10 MR. OXFORD: Same objection.
11 A. I don't know their procedures for
12 liquidating accounts. I would assume it could
13 be similar to the CME, but in light of the CME
14 doing that, if I was Lehman, I would take -- I
15 would be proactive and do my own liquidation
16 before they liquidated me and I could lose \$1.6
17 billion.
18 Q. If you thought you couldn't avoid the
19 loss of \$1.6 billion either way, might you just
20 decide to transfer the accounts to an acquirer
21 instead of liquidating them yourself?
22 MR. OXFORD: Objection. Asked and
23 answered. Assumes facts not in evidence.
24 A. Again, I think I've said I would
25 assess the risk of doing the business, but if I

<p style="text-align: right;">Page 190</p> <p>1 D. McIsaac</p> <p>2 was negotiating transferring the margin, that</p> <p>3 would be a part to start my negotiating. If</p> <p>4 they were liquidated, that would be the amount;</p> <p>5 I would negotiate from there.</p> <p>6 Q. And if you assume that the liquidation</p> <p>7 would cost you all of the margin, would it be</p> <p>8 rational to agree to transfer the accounts and</p> <p>9 transfer the margin with the accounts?</p> <p>10 A. For what reason? Why would I have to</p> <p>11 do that? What benefit do I get by doing that?</p> <p>12 Q. Do you preserve customer positions by</p> <p>13 doing that?</p> <p>14 A. Are we talking about customer</p> <p>15 positions or proprietary? I'm not sure what</p> <p>16 we're talking about here. I thought we were</p> <p>17 talking proprietary positions. That's what the</p> <p>18 CME --</p> <p>19 Q. Would it preserve customer positions</p> <p>20 by doing that? Let's talk about the customer</p> <p>21 account. If you moved -- if you knew that you</p> <p>22 were going to lose the posted margin in a</p> <p>23 liquidation either way, would it be rational to</p> <p>24 transfer that margin to an acquirer in order to</p> <p>25 preserve the customer positions for the benefit</p>	<p style="text-align: right;">Page 191</p> <p>1 D. McIsaac</p> <p>2 of those customers?</p> <p>3 MR. OXFORD: Objection. Asked and</p> <p>4 answered. Assumes facts not in evidence.</p> <p>5 You can answer.</p> <p>6 A. I would assume you would take all that</p> <p>7 into account. The main thing I would look at is</p> <p>8 that the CME liquidated the proprietary</p> <p>9 positions and not the customer positions.</p> <p>10 There is some, I guess some goal in</p> <p>11 preserving the customer positions even from the</p> <p>12 clearing orgs., so I would assume Lehman would</p> <p>13 talk to the OCC and said if we liquidated all of</p> <p>14 our proprietary positions, maybe they would not</p> <p>15 liquidate the customer positions. That would be</p> <p>16 something you would negotiate when that is</p> <p>17 happening. You would discuss it when that is</p> <p>18 happening.</p> <p>19 Q. Assuming the parties didn't agree to</p> <p>20 just transfer all of the accounts with all of</p> <p>21 the margin to Barclays?</p> <p>22 A. I would think you would look at all</p> <p>23 your options before you decided on doing</p> <p>24 something.</p> <p>25 Q. Okay. And how long does it take to</p>
<p style="text-align: right;">Page 192</p> <p>1 D. McIsaac</p> <p>2 analyze all of your options in the circumstances</p> <p>3 that we're talking about here?</p> <p>4 MR. OXFORD: Objection. Form.</p> <p>5 MR. GREEN: Same objection.</p> <p>6 A. I don't know how long they had to</p> <p>7 prepare for these options and how long -- how</p> <p>8 long it would take to call the OCC and ask them</p> <p>9 the question. I'm sure you could ask them the</p> <p>10 question and go from there and see what they</p> <p>11 said.</p> <p>12 Q. And what question would you propose</p> <p>13 asking the OCC?</p> <p>14 A. Well, you're -- you seem to be</p> <p>15 concerned about them liquidating the account. I</p> <p>16 would talk to the OCC and say, "The CME just</p> <p>17 liquidated my accounts. What are your plans?"</p> <p>18 Q. And --</p> <p>19 A. Or I'm sure maybe they were having</p> <p>20 discussions with the OCC at the time.</p> <p>21 Q. Didn't we look at an e-mail earlier</p> <p>22 that showed that -- that had the discussion with</p> <p>23 the OCC and the OCC told Lehman and the Trustee</p> <p>24 that it was going to liquidate their accounts?</p> <p>25 A. That was after the 19th.</p>	<p style="text-align: right;">Page 193</p> <p>1 D. McIsaac</p> <p>2 Q. Okay.</p> <p>3 A. The sale agreement was the 16th.</p> <p>4 Q. Let's assume the threats to liquidate</p> <p>5 started on the 15th. Does that change your</p> <p>6 opinion?</p> <p>7 MR. OXFORD: Object to the form. It</p> <p>8 assumes facts not in evidence.</p> <p>9 You can answer if you're able.</p> <p>10 A. I don't know what happened at the time</p> <p>11 and I don't know -- we're assuming if the OCC</p> <p>12 came in on the 15th and said unless you</p> <p>13 liquidated, if that was the case, then why on</p> <p>14 the 20th were they threatening to liquidate it</p> <p>15 if they already threatened to liquidate it and</p> <p>16 didn't do it? I'm not sure --</p> <p>17 Q. I understand, but I want you to</p> <p>18 understand that I'm trying to ask you questions</p> <p>19 because you are providing an expert opinion</p> <p>20 about what would have been rational under these</p> <p>21 circumstances, and I'm probing that by</p> <p>22 describing to you the circumstances that may or</p> <p>23 may not affect your opinion.</p> <p>24 So I would like you to answer my</p> <p>25 questions as opposed to posing questions each</p>

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<p>1 D. McIsaac</p> <p>2 time.</p> <p>3 A. Sorry about that.</p> <p>4 Q. That's okay.</p> <p>5 A. I -- would it be rational? It would</p> <p>6 be rational to do many things. It might be</p> <p>7 rational to transfer the margin. It might be</p> <p>8 rational to liquidate your accounts. It may be</p> <p>9 rational to find another buyer. There's a lot</p> <p>10 of rational things that could be done at that</p> <p>11 point in time.</p> <p>12 Q. And is it fair to say that you can't</p> <p>13 really say what would be truly rational if you</p> <p>14 didn't understand the circumstances?</p> <p>15 MR. OXFORD: Objection. Form.</p> <p>16 A. I can say that based -- and I was not</p> <p>17 there, I don't know what was negotiated and what</p> <p>18 was discussed. I think what I laid out was</p> <p>19 rational things you could do.</p> <p>20 Q. How can you say that it wouldn't have</p> <p>21 been rational for the Trustee to make a decision</p> <p>22 under the specific circumstances that it was</p> <p>23 facing at the time if you don't know the</p> <p>24 specific circumstances that the Trustee was</p> <p>25 facing at the time?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. We talked about the 15th is what I</p> <p>4 asked the question -- answered a question on,</p> <p>5 and the Trustee wasn't involved then. So I'm</p> <p>6 not sure, this question now, what's the basis of</p> <p>7 it. I'm sorry.</p> <p>8 Q. Right. Each question I ask is a new</p> <p>9 question, so I would appreciate it if you would</p> <p>10 not assume for every question I ask that I'm</p> <p>11 building on a prior question.</p> <p>12 A. No. No. That's why I'm asking what's</p> <p>13 the basis for this question, because I don't</p> <p>14 know.</p> <p>15 Q. I'm asking you how you can give an</p> <p>16 expert opinion about what it would have been</p> <p>17 rational for the Trustee to do under a specific</p> <p>18 set of facts when you don't know the</p> <p>19 circumstances that the Trustee was facing at the</p> <p>20 time?</p> <p>21 MR. OXFORD: Objection. Form.</p> <p>22 Misstates -- misstates the witness's</p> <p>23 testimony.</p> <p>24 But you can answer.</p> <p>25 A. I don't know what went through the</p>
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<p>1 D. McIsaac</p> <p>2 Trustee's mind and what his determination was</p> <p>3 and what he believed to be a rational approach</p> <p>4 at that time. What I've given an opinion on is</p> <p>5 what I think a rational seller would do in my</p> <p>6 opinion at that point in time, how they would</p> <p>7 react to what was going on.</p> <p>8 Q. Doesn't that opinion require you to</p> <p>9 know what was going on at that time?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 A. I believe I've stated that a rational</p> <p>12 seller would negotiate the sale of the margin</p> <p>13 assets. No matter what was going on at the time</p> <p>14 you would do that negotiation.</p> <p>15 Q. Is it fair to say that it is not your</p> <p>16 opinion that a rational seller would have</p> <p>17 required dollar-for-dollar compensation for</p> <p>18 every dollar's worth of margin that it agreed to</p> <p>19 transfer in this situation facing this Trustee</p> <p>20 in September of 2008, or --</p> <p>21 MR. OXFORD: Objection.</p> <p>22 Q. -- is it not your opinion?</p> <p>23 MR. OXFORD: Objection. Form. Asked</p> <p>24 and answered.</p> <p>25 You can answer it again.</p>	<p>1 D. McIsaac</p> <p>2 A. My opinion is a rational seller would</p> <p>3 look for dollar for dollar, they would negotiate</p> <p>4 from there, and at this point in time if there</p> <p>5 were things that needed to be adjusted, people</p> <p>6 negotiating the sale and the purchase would come</p> <p>7 to an agreement on what was being sold and what</p> <p>8 was being purchased.</p> <p>9 Q. Okay. So when you say in your report</p> <p>10 a rational seller would not include margin in</p> <p>11 the deal unless it was being compensated dollar</p> <p>12 for dollar, do you mean what you said in that</p> <p>13 sentence or are you modifying it here today?</p> <p>14 MR. OXFORD: Objection. Form. Asked</p> <p>15 and answered.</p> <p>16 You can answer it again.</p> <p>17 A. You are giving me facts that were not</p> <p>18 part of my opinion. What I said in my opinion</p> <p>19 was a rational purchaser would want to quantify</p> <p>20 the risk to determine what additional assets it</p> <p>21 needed, and a rational seller would include</p> <p>22 margin on dollar-for-dollar basis.</p> <p>23 As you negotiate that, you may change</p> <p>24 your mind. You may decide I'll take 50 cents on</p> <p>25 the dollar, I may take 25 cents on the dollar, I</p>

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<p>1 D. McIsaac</p> <p>2 may want a dollar and a half on a dollar because</p> <p>3 I think the assets are worth more. That's a</p> <p>4 negotiation that would occur at that time.</p> <p>5 Q. You might want zero --</p> <p>6 A. But the starting fact would be I would</p> <p>7 want dollar for dollar and I would negotiate</p> <p>8 from there. I would assume I would not give</p> <p>9 away assets for nothing.</p> <p>10 Q. Would you agree that there could be</p> <p>11 circumstances in which it was rational to agree</p> <p>12 to transfer the accounts in exchange for the</p> <p>13 margin that was posted to secure those accounts?</p> <p>14 MR. OXFORD: Objection. Form.</p> <p>15 A. I would agree that the seller could</p> <p>16 make a rational decision to transfer the</p> <p>17 accounts with no compensation, if that's what</p> <p>18 they wanted, based on facts and circumstances at</p> <p>19 that point in time if that's what they</p> <p>20 negotiated, but I would anticipate that that</p> <p>21 would be somehow brought into -- into the</p> <p>22 contract that that was being done and probably</p> <p>23 brought in front of the judge if he was selling</p> <p>24 assets above and beyond what was in the</p> <p>25 Clarification Letter.</p>	<p>1 D. McIsaac</p> <p>2 Q. Okay.</p> <p>3 MR. OXFORD: Trish, that's about</p> <p>4 another hour. I don't know if this is a</p> <p>5 good time to take five minutes.</p> <p>6 MS. BLOOMER: Yes, it's fine.</p> <p>7 THE VIDEOGRAPHER: The time is 3:03.</p> <p>8 This is the end of the tape labeled number</p> <p>9 4. We're going off the record.</p> <p>10 (Recess.)</p> <p>11 THE VIDEOGRAPHER: This is the start</p> <p>12 of the tape labeled number 5. The time is</p> <p>13 3:19. We're back on the record.</p> <p>14 BY MS. BLOOMER:</p> <p>15 Q. Good afternoon again.</p> <p>16 A. Good afternoon.</p> <p>17 Q. Would you consider assets that were</p> <p>18 posted as margin at a clearing organization with</p> <p>19 respect to an exchange-traded derivatives</p> <p>20 account to be an asset that's used in the</p> <p>21 business of the exchange-traded derivatives?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 A. It would be an asset that at that</p> <p>24 point in time was being used to secure the</p> <p>25 obligations. Assets used in the business may</p>
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<p>1 D. McIsaac</p> <p>2 have a lot of different terms.</p> <p>3 Q. Do you agree that posted margin is</p> <p>4 associated with the exchange-traded derivatives</p> <p>5 business that it secures?</p> <p>6 A. It's associated with the</p> <p>7 exchange-traded derivatives that it's securing.</p> <p>8 I don't know what business it would be part of.</p> <p>9 Q. Can you operate an exchange-traded</p> <p>10 derivatives business without posting margin to</p> <p>11 satisfy the requirements of a clearing</p> <p>12 organization?</p> <p>13 A. I don't believe so.</p> <p>14 Q. I'm showing you Exhibit 1, which is</p> <p>15 the Asset Purchase Agreement. If you could turn</p> <p>16 to page 2 at the bottom, meaning the number on</p> <p>17 the bottom. The term "business" is defined, do</p> <p>18 you see that? It's the second full definition</p> <p>19 on page 2.</p> <p>20 A. You're saying -- oh, I'm sorry.</p> <p>21 Business, yes, I'm sorry. I was looking at the</p> <p>22 bottom, actually.</p> <p>23 Yes.</p> <p>24 Q. Would exchange-traded derivatives in</p> <p>25 your experience fall under any of the categories</p>	<p>1 D. McIsaac</p> <p>2 of LBI's businesses that are described in this</p> <p>3 definition?</p> <p>4 MR. OXFORD: Objection. Form.</p> <p>5 A. The concept of exchange-traded</p> <p>6 derivatives -- there are different parts of the</p> <p>7 business. You have futures that are clearing</p> <p>8 and execution business. You have equity options</p> <p>9 that are just -- that are transpiring for</p> <p>10 customers that are just part of the customer</p> <p>11 business as well as selling bonds, you know,</p> <p>12 stocks and bonds, and then you have trading of</p> <p>13 exchange-traded derivatives that could be part</p> <p>14 of a portfolio of assets or you could possibly</p> <p>15 just be trading them by themselves.</p> <p>16 Q. Okay. And one of the businesses</p> <p>17 that's listed here of the seller that are</p> <p>18 encompassed within the term "business" is the</p> <p>19 trading and advisory businesses. Do you see</p> <p>20 that?</p> <p>21 A. Uh-huh. I see fixed income and</p> <p>22 equities cash trading.</p> <p>23 Q. And then in the next line do you see</p> <p>24 trading and advisory businesses?</p> <p>25 A. Yes.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Would exchange-traded derivatives that</p> <p>3 were proprietary to LBI be considered part of</p> <p>4 the trading business of LBI?</p> <p>5 A. I'm a little confused why trading</p> <p>6 would be used in two places. I'm not sure</p> <p>7 what -- what the differentiation is between the</p> <p>8 two of them. Fixed income and equities cash</p> <p>9 trading and trading and advisory business, I</p> <p>10 just don't know why it would be referenced</p> <p>11 twice.</p> <p>12 Q. Is it your understanding that the</p> <p>13 exchange-traded derivatives were a portion of</p> <p>14 the trading business that Barclays acquired?</p> <p>15 MR. OXFORD: Objection. Form.</p> <p>16 A. The proprietary part of it would have</p> <p>17 been part of the exchange -- the trading</p> <p>18 businesses that they acquired.</p> <p>19 Q. And would you agree that the customer</p> <p>20 futures business that Barclays acquired from</p> <p>21 Lehman was -- I'm sorry. Would you agree that</p> <p>22 the customer futures business that LBI conducted</p> <p>23 prior to September 22, 2008 would fall within</p> <p>24 the definition of LBI's business as a futures</p> <p>25 commission merchant?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. If you turn to page 4 -- I'm</p> <p>4 sorry, page 10. I'm sorry, 6.</p> <p>5 If you turn to page 6 of the Asset</p> <p>6 Purchase Agreement, do you see the definition of</p> <p>7 "purchased assets" that begins around the middle</p> <p>8 of that page?</p> <p>9 A. Uh-huh.</p> <p>10 Q. It says, "Purchased Assets means all</p> <p>11 of the assets of seller and its subsidiaries</p> <p>12 used in connection with the business, excluding</p> <p>13 the excluded assets," and then the word</p> <p>14 "including," do you see that?</p> <p>15 A. Yes.</p> <p>16 Q. And the term "business" that's</p> <p>17 capitalized there, do you understand that to be</p> <p>18 referring to the business definition that we</p> <p>19 just looked at on the prior page?</p> <p>20 A. I believe so.</p> <p>21 Q. Okay. If you look at page 10, there's</p> <p>22 a word "including" that's defined. Do you see</p> <p>23 that?</p> <p>24 A. Yes.</p> <p>25 Q. And do you see that it says, "The word</p>
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<p>1 D. McIsaac</p> <p>2 'including' or any variation thereof means</p> <p>3 including, without limitation, and shall not be</p> <p>4 construed to limit any general statement that it</p> <p>5 follows to the specific or similar terms or</p> <p>6 matters immediately following it."</p> <p>7 A. Yes.</p> <p>8 Q. Turning back to page 6, the definition</p> <p>9 of "purchased assets," given the definition we</p> <p>10 just looked at of the term "including," is it</p> <p>11 fair to say that the "purchased assets"</p> <p>12 definition is not limited by the subparagraphs</p> <p>13 that follow the word "including"?</p> <p>14 MR. OXFORD: Objection. Form. Calls</p> <p>15 for a legal conclusion.</p> <p>16 A. Yeah, I'm not a lawyer, so this is --</p> <p>17 I'm not sure what it means and if you had before</p> <p>18 businesses, why you needed additional, but I</p> <p>19 don't know. I'm not -- I don't want to -- I</p> <p>20 don't want to give an opinion on a legal</p> <p>21 document.</p> <p>22 Q. Okay. You understand what the term</p> <p>23 "including without limitation" means?</p> <p>24 A. I believe so.</p> <p>25 Q. What does that mean?</p>	<p>1 D. McIsaac</p> <p>2 A. It means including without limitation.</p> <p>3 Q. And you understand what that means,</p> <p>4 the common usage of that term means?</p> <p>5 A. I -- "including without limitation"</p> <p>6 means including, we're not limiting it to what</p> <p>7 it means, what follows it.</p> <p>8 Q. Okay. Thank you. Is it your opinion</p> <p>9 that the margin that was posted in LBI's</p> <p>10 accounts at the OCC were not assets of LBI used</p> <p>11 in connection with the business, as that term is</p> <p>12 defined in this agreement?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 Misstates the document. Calls for a legal</p> <p>15 conclusion.</p> <p>16 You can answer.</p> <p>17 A. Could you re-read that question?</p> <p>18 Q. Is it your opinion that the margin</p> <p>19 that was posted in LBI's accounts at the OCC</p> <p>20 were not assets of LBI used in connection with</p> <p>21 the business as that term is defined in this</p> <p>22 agreement?</p> <p>23 MR. OXFORD: Objection. Form. Again,</p> <p>24 misstates the document. Calls for a legal</p> <p>25 conclusion.</p>

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1 D. McIsaac

2 A. There was a negative in there and I'm
3 not sure -- I mean, I don't know what that term
4 means in a legal document.

5 Q. Are the assets posted as margin at the
6 OCC assets of LBI?

7 A. They may or may not be assets of LBI.

8 Q. Do you know in the context of the
9 assets at the OCC as of September 19, 2008
10 whether they were assets of LBI or assets of
11 someone else?

12 A. The assets posted there could have
13 been derived from many factions. If they put
14 Treasury bills up, it could have been Treasury
15 bills owned by LBI. It could have been Treasury
16 bills that were accepted as collateral against a
17 receivable for a reverse repo or a stock borrow.
18 It could be customers or non-customers assets.

19 Q. Do you understand the Trustee's
20 position in this case to be the assets at the
21 OCC were not LBI proprietary assets?

22 A. I don't know if I have seen that -- I
23 don't recall seeing that specific phrase, that
24 they were not proprietary assets.

25 Q. You reviewed this agreement when you

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2 provided your opinion; is that right?

3 A. Yes. Uh-huh.

4 Q. And is it your opinion that this
5 agreement does not encompass the margin assets
6 that were posted at the OCC?

7 A. I don't believe I've seen anything in
8 here that references margin assets, and it
9 appeared to be a very substantial asset class.
10 I would have thought they would have been broken
11 out in the agreement as to what was happening
12 with the assets that were posted at various
13 exchanges.

14 Q. You said earlier when we looked at the
15 Transfer and Assumption Agreement that you would
16 have assumed that the purchase agreement would
17 document the agreement to transfer margin to
18 Barclays if that were the parties' agreement,
19 correct?

20 A. Right.

21 Q. Do you think this purchase agreement
22 accomplishes that when it says "all assets of
23 seller used in connection with the business,
24 excluding the excluded assets, are purchased
25 assets"?

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1 D. McIsaac

2 MR. OXFORD: Objection. Form. Asked
3 and answered. You can answer.

4 A. At points in time you may use assets
5 to secure your obligations. I don't know if
6 they would be considered assets of the business.
7 If they were \$700 million today and \$200 million
8 tomorrow, what would they be? So I would think
9 if you were trying to transfer or somehow
10 include those margin assets, you would define
11 them and what the value was because that value
12 could have changed drastically from day one to
13 whenever you're consummating the deal. As you
14 saw, the margin requirements go significantly up
15 and then down.

16 Q. Is it your understanding that the
17 parties agreed that they would include specific
18 references to every asset that Barclays was to
19 acquire in this transaction?

20 MR. OXFORD: Objection. Form.

21 A. I don't know if they did or not. I
22 would think significant assets such as margin
23 would be noted and what was happening with it.

24 Q. The agreement says that all of the
25 assets used in connection with the business are

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2 purchased assets, excluding the excluded assets.

3 Would you expect that since margin was
4 such a significant asset, as you say, that it
5 would have, therefore, had to have been -- that
6 it would, therefore, have been logical to
7 reference it in the excluded assets section if
8 indeed the parties intended to exclude it?

9 MR. OXFORD: Objection. Form.

10 A. I don't know if you -- I would always
11 include what you're buying, not necessarily
12 exclude what you're not buying. I think to make
13 something really understandable, you would say
14 include this, include that.

15 Like I said, the margin at the point
16 in time when this was done might have been a
17 billion dollars. On the 19th, it might have
18 been \$100 million. I think you would define
19 that at the time you were agreeing to the
20 contract so that you made sure both parties came
21 to what their -- with what they agreed to.

22 So if it was on the 15th or something,
23 it was one item, one balance, later on it's a
24 different balance. I don't think an asset like
25 that would be included without some kind of

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<p>1 D. McIsaac</p> <p>2 reference.</p> <p>3 Q. So you would assume the parties to a</p> <p>4 transaction would specifically identify the</p> <p>5 included assets as opposed to saying we're</p> <p>6 getting everything except the excluded assets;</p> <p>7 is that your testimony?</p> <p>8 A. I would expect if it's an asset like</p> <p>9 margin, that would go up and down in value on a</p> <p>10 daily basis. If you were negotiating to buy</p> <p>11 that asset, you would want to put into the</p> <p>12 contract what the value of that asset is, what</p> <p>13 that asset is that you're receiving.</p> <p>14 Open-ended margin could be, again, it</p> <p>15 could have been a dollar. Would they have</p> <p>16 accepted it if it was only a dollar? I don't</p> <p>17 know. So I think for any ambiguity, you would</p> <p>18 include the assets and you would either state at</p> <p>19 the time of the transaction or put a dollar</p> <p>20 amount at that point in time so that if they</p> <p>21 were used at one point in time, they weren't</p> <p>22 sold out, you know, five days later.</p> <p>23 Q. If you were advising LBI on this deal,</p> <p>24 and you saw that the agreement was structured so</p> <p>25 that all of the assets were purchased assets</p>	<p>1 D. McIsaac</p> <p>2 except what was excluded, would you advise them</p> <p>3 that to avoid ambiguity they should reference</p> <p>4 margin in the excluded assets section?</p> <p>5 MR. OXFORD: Objection to form.</p> <p>6 A. I would probably advise the seller --</p> <p>7 the buyer to make sure that they put in all the</p> <p>8 assets that they wanted to make sure they got in</p> <p>9 the agreement, not --</p> <p>10 Q. I'm not asking you what you would do</p> <p>11 for the buyer. I'm asking you if you were</p> <p>12 advising the seller and their agreement stated</p> <p>13 "purchased assets means all of the assets of</p> <p>14 seller used in connection with the business,</p> <p>15 excluding the excluded assets, would you advise</p> <p>16 him that it was prudent to reference margin as</p> <p>17 an excluded asset given how substantial the</p> <p>18 value was.</p> <p>19 A. I would advise them to reference it</p> <p>20 either as excluded or included.</p> <p>21 Q. Included if it was included and</p> <p>22 excluded if it was excluded?</p> <p>23 A. Right.</p> <p>24 Q. Okay. Is it your understanding that</p> <p>25 Barclays knew on September 16, 2008 what the</p>
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<p>1 D. McIsaac</p> <p>2 margin was worth at the OCC and at the other</p> <p>3 clearing organizations to which LBI traded in</p> <p>4 exchange-traded derivatives?</p> <p>5 A. I believe I've seen some e-mail</p> <p>6 traffic that noted that the legal counsel for</p> <p>7 Barclays had been discussing margin requirements</p> <p>8 of various exchanges. I think Mr. Leitner</p> <p>9 pointed out that Barclays was monitoring their</p> <p>10 exposure by knowing what the margin values were.</p> <p>11 So I assume they knew something that was going</p> <p>12 on at the exchanges.</p> <p>13 Q. Is it your opinion that you would have</p> <p>14 advised the acquirer to reference margin</p> <p>15 specifically because it was so substantial in</p> <p>16 value assumes that Barclays knew on September 16</p> <p>17 what the value of the margin was; is that</p> <p>18 correct?</p> <p>19 A. I would think they would know what</p> <p>20 assets they were buying.</p> <p>21 Q. And does your opinion assume that they</p> <p>22 knew what assets, what the value of the margin</p> <p>23 was that they were buying on April -- on</p> <p>24 September 16, 2008 when they entered into this</p> <p>25 Asset Purchase Agreement?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. I would have to assume somebody</p> <p>4 purchasing assets would know the value of the</p> <p>5 assets they were purchasing, if not what they</p> <p>6 thought the value was, at least what the value</p> <p>7 was on the seller's records.</p> <p>8 Q. I'm not trying to be argumentative.</p> <p>9 You've given an opinion in your report, and we</p> <p>10 can look at the opinion if you don't recall it.</p> <p>11 You've given an opinion in your report</p> <p>12 that, given how much this margin was worth, you</p> <p>13 would have expected the acquirer to reference it</p> <p>14 specifically as a purchased asset --</p> <p>15 A. Yes.</p> <p>16 Q. -- if indeed they thought it was being</p> <p>17 purchased.</p> <p>18 I'm asking you whether that opinion</p> <p>19 assumes that Barclays knew on September 16, 2008</p> <p>20 what the value of the margin was that LBI held</p> <p>21 or that LBI had posted to secure the</p> <p>22 exchange-traded derivatives?</p> <p>23 A. Again, I would assume they knew the</p> <p>24 value of what they were purchasing. So I --</p> <p>25 Q. Does your opinion --</p>

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<p>1 D. McIsaac</p> <p>2 A. My opinion assumes that they would</p> <p>3 know the value they were purchasing. I would</p> <p>4 assume most people wouldn't buy something that</p> <p>5 they didn't know what they were buying.</p> <p>6 Q. Would you assume that most people</p> <p>7 wouldn't buy an entire broker-dealer business</p> <p>8 based on 48 hours of negotiations as well?</p> <p>9 MR. OXFORD: Objection. Form.</p> <p>10 Assumes facts not in evidence.</p> <p>11 A. From what I understand, Bank of</p> <p>12 America bought Lehman, more than just the</p> <p>13 brokerage business, over a weekend. So I think</p> <p>14 you can buy anything you want in any time period</p> <p>15 you want. I don't know how much due diligence</p> <p>16 was done in July, in August, in June.</p> <p>17 People have an understanding of the</p> <p>18 various competitors and what they do and how</p> <p>19 they manage it. There are reports out there.</p> <p>20 There's information out there. So I don't know</p> <p>21 what Barclays knew when they negotiated the</p> <p>22 deal.</p> <p>23 I don't know how much time they took</p> <p>24 to write this versus how much time it took to</p> <p>25 determine what they were buying.</p>	<p>1 D. McIsaac</p> <p>2 Q. And again, you think it's possible</p> <p>3 that they executed this agreement before they</p> <p>4 knew what they were buying?</p> <p>5 MR. OXFORD: Objection. Form.</p> <p>6 Misstates the witness's testimony.</p> <p>7 You can answer.</p> <p>8 A. I believe I said I assume when they</p> <p>9 execute an agreement they knew what they were</p> <p>10 buying.</p> <p>11 Q. Is that assumption based on any</p> <p>12 preliminary assumptions about how much time</p> <p>13 Barclays had to do the due diligence prior to</p> <p>14 the time it entered into this transaction?</p> <p>15 A. I can't fathom why anybody would buy</p> <p>16 anything without knowing what they were buying.</p> <p>17 So if they took 48 hours and thought that was</p> <p>18 enough to assess what they were buying and put a</p> <p>19 value on it, then that's what they did.</p> <p>20 I don't know -- I can't be in Barclays</p> <p>21 shoes to figure out what was in their mind when</p> <p>22 they bought this. Evidently, they thought they</p> <p>23 were getting valuable assets. How much they</p> <p>24 were getting and what they were willing to pay</p> <p>25 for it they had to make an assessment, and I</p>
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<p>1 D. McIsaac</p> <p>2 assume they took whatever time it needed to take</p> <p>3 to do that assessment.</p> <p>4 And I'm assuming that this transaction</p> <p>5 had to be approved by the board of directors.</p> <p>6 They had to provide some information to their</p> <p>7 board of directors on a purchase of this size.</p> <p>8 I don't think they went to</p> <p>9 the board -- would have gone to the board of</p> <p>10 directors and said we're going to buy this, but</p> <p>11 we don't know what we're buying. So I would</p> <p>12 think they would have had a clear understanding</p> <p>13 of what they were buying.</p> <p>14 Q. Might they have had a clear</p> <p>15 understanding of what they were buying but not</p> <p>16 necessarily a clear understanding of what all of</p> <p>17 those assets were worth?</p> <p>18 A. Then what were they buying if they</p> <p>19 didn't know what they were buying, what the</p> <p>20 worth -- how could you put a price on something</p> <p>21 unless you assessed it?</p> <p>22 Q. I would appreciate it if you would</p> <p>23 answer my question.</p> <p>24 A. I'm sorry. I'm asking you, I don't</p> <p>25 believe a purchaser would enter into an</p>	<p>1 D. McIsaac</p> <p>2 agreement to purchase something without</p> <p>3 assessing what the value is that they were</p> <p>4 purchasing.</p> <p>5 Q. Okay. If you could take the Sale</p> <p>6 Order transcript that we had looked at earlier,</p> <p>7 it's Exhibit 442, and if you could turn to</p> <p>8 page -- if you could turn to page 60.</p> <p>9 At the bottom of page 60, the hearing</p> <p>10 transcript reads: "We cannot take the risk of</p> <p>11 rejecting this transaction because of</p> <p>12 ambiguities, the lack of a piece of paper to</p> <p>13 support every element of the assets to be</p> <p>14 transferred, the lack of a definition as to</p> <p>15 particular items."</p> <p>16 Do you see that?</p> <p>17 A. Yes.</p> <p>18 Q. Is it possible that in this</p> <p>19 circumstance the parties agreed, due to the</p> <p>20 extraordinary circumstances at the time, to</p> <p>21 structure a deal in a way that they wouldn't</p> <p>22 structure under normal circumstances?</p> <p>23 MR. OXFORD: Objection. Form.</p> <p>24 A. I believe that they might structure a</p> <p>25 deal differently than they would under different</p>

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<p>1 D. McIsaac</p> <p>2 circumstances, yes.</p> <p>3 Q. And is it your understanding that the</p> <p>4 circumstances that existed in 2000 -- in</p> <p>5 September of 2008 made it such that the parties</p> <p>6 in fact conducted their negotiations and</p> <p>7 structured this transaction in a manner</p> <p>8 differently than they would have under normal</p> <p>9 market situations, circumstances?</p> <p>10 MR. OXFORD: Objection. Asked and</p> <p>11 answered.</p> <p>12 A. I believe I answered that saying yes,</p> <p>13 I believe this was a different time and they</p> <p>14 negotiated this differently than they would have</p> <p>15 at other times.</p> <p>16 Q. Is it possible that Lehman was willing</p> <p>17 to offer terms to Barclays that a typical seller</p> <p>18 wouldn't necessarily offer because of the</p> <p>19 exigencies that made this transaction important</p> <p>20 to Lehman?</p> <p>21 MR. OXFORD: Objection. Form.</p> <p>22 A. I'm not sure how -- why a firm would</p> <p>23 do certain things at times. It couldn't make</p> <p>24 agreements that it normally wouldn't make. I'm</p> <p>25 not sure what was in Lehman's mind or Barclays'</p>	<p>1 D. McIsaac</p> <p>2 mind at the time of selling this and what</p> <p>3 decisions they thought they were doing and for</p> <p>4 what reasons.</p> <p>5 Q. I'm showing you a document marked as</p> <p>6 Exhibit 689.</p> <p>7 (Exhibit 689, Deposition of James</p> <p>8 Kobak, marked for identification, as of this</p> <p>9 date.)</p> <p>10 Q. This is deposition testimony that was</p> <p>11 provided on behalf of the Trustee by Mr. Kobak.</p> <p>12 Are you familiar with this deposition</p> <p>13 testimony?</p> <p>14 A. I don't know if I've read it and</p> <p>15 relied upon it. I know Mr. Kobak made</p> <p>16 declarations and depositions. I don't know if</p> <p>17 this was something that was in my reliance</p> <p>18 materials, but I know he made the depositions.</p> <p>19 Q. Okay. So you haven't necessarily --</p> <p>20 do you remember reading this deposition</p> <p>21 transcript?</p> <p>22 A. I don't remember, but I might have</p> <p>23 read it. I don't remember. I read a few of</p> <p>24 them and -- I don't know if I read this one. I</p> <p>25 think I might have. I'm not sure if it was this</p>
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<p>1 D. McIsaac</p> <p>2 or the declaration.</p> <p>3 Q. Fast forwarding to the time that the</p> <p>4 SIPC Trustee was introduced into this matter on</p> <p>5 Friday, September 19, you said that you don't</p> <p>6 know what was in the minds of the parties at the</p> <p>7 time that they were considering this</p> <p>8 transaction; is that right?</p> <p>9 A. Uh-huh.</p> <p>10 Q. If you could turn to page 282 of Mr.</p> <p>11 Kobak's deposition testimony, starting on line</p> <p>12 14, the question says, and this is, for context,</p> <p>13 talking about a Collateral Agreement that the</p> <p>14 Trustee signed on Friday, September 19, either</p> <p>15 at or shortly after the sale hearing:</p> <p>16 It says, "LBI has assigned to Barclays</p> <p>17 all rights and securities, cash, and other</p> <p>18 property defined as collateral pledged by LBI to</p> <p>19 the Options Clearing Corporation and held for</p> <p>20 OCC's benefit at JPMorgan Chase. Did you see</p> <p>21 that?" The answer is, "Yes."</p> <p>22 The next question: "And was it your</p> <p>23 understanding that that's what the Trustee was</p> <p>24 authorizing when you signed this?" And the</p> <p>25 answer is, "Yes, consistent with the overall</p>	<p>1 D. McIsaac</p> <p>2 deal that there be no cash excess that would go</p> <p>3 to Barclays, because that would be inconsistent</p> <p>4 with the no cash and that this wouldn't make the</p> <p>5 deal so rich that it would be way beyond the</p> <p>6 parameters that we discussed earlier."</p> <p>7 Do you see that testimony?</p> <p>8 A. Yes.</p> <p>9 Q. Okay. The next question says: "Did</p> <p>10 you tell anyone this? When you say you signed</p> <p>11 this consistent with the idea that there would</p> <p>12 be no cash, this says cash. This says cash will</p> <p>13 be transferred to Barclays." And the answer,</p> <p>14 "Yeah, but cash would be transferred against the</p> <p>15 liabilities. What I'm saying is nobody told us</p> <p>16 there might be in excess of a billion dollars of</p> <p>17 cash or something like that that would end up at</p> <p>18 Barclays when the deal was no cash and when</p> <p>19 there was an economic parameter to the deal."</p> <p>20 Question: "So to the extent the cash</p> <p>21 was simply needed to cover the liabilities, you</p> <p>22 thought it was possible to be included in the</p> <p>23 deal; is that correct?"</p> <p>24 Answer: "Yes."</p> <p>25 Do you recall having ever seen this</p>

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<p>1 D. McIsaac</p> <p>2 testimony before?</p> <p>3 A. I don't recall, but I might have seen</p> <p>4 it, yes. I don't recall right now, but it seems</p> <p>5 something I might have heard or seen.</p> <p>6 Q. Would you agree that this testimony is</p> <p>7 speaking to the understanding that the Trustee</p> <p>8 and Mr. Kobak had at the time on September 19,</p> <p>9 2008?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 A. I mean, it's taken out of context.</p> <p>12 I'm reading two pages of a 300-and-some-page</p> <p>13 document. It looks like Mr. Kobak is stating</p> <p>14 that he was transferring or willing to transfer</p> <p>15 assets that he thought was part of the deal.</p> <p>16 Q. And those assets included collateral</p> <p>17 pledged by LBI to the Options Clearing</p> <p>18 Corporation and held for OCC's benefit at</p> <p>19 JPMorgan Chase, right?</p> <p>20 A. That's what it says, yes.</p> <p>21 Q. That --</p> <p>22 A. That's what the question says.</p> <p>23 Q. You understand that to be different</p> <p>24 from property, customer property held by LBI to</p> <p>25 secure customer positions?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. I'm not sure of what assets were being</p> <p>4 held at JPMorgan Chase. It looks like he's</p> <p>5 saying cash in this reference and it looks like</p> <p>6 he's assuming it was part of the liabilities.</p> <p>7 So it might have been the cash that was payable</p> <p>8 to the customers who put up margin for the OCC</p> <p>9 trades, and he thought he was just transferring</p> <p>10 the cash against those liabilities.</p> <p>11 Q. Would that be cash held by LBI or cash</p> <p>12 held by JPMorgan under your interpretation of</p> <p>13 what this may be referring to?</p> <p>14 A. It would be cash held by LBI at</p> <p>15 JPMorgan.</p> <p>16 Q. For whose benefit?</p> <p>17 A. LBI's.</p> <p>18 Q. Okay. This seems to be talking about</p> <p>19 cash that was held for the OCC's benefit at</p> <p>20 JPMorgan Chase, do you see that?</p> <p>21 A. It looks like it's being pledged to</p> <p>22 the OCC for the benefit of LBI and it's held at</p> <p>23 Chase.</p> <p>24 Q. And you agree that this is property</p> <p>25 held at Chase, not at LBI?</p>
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<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. It's property held at LBI on deposit</p> <p>4 at Chase.</p> <p>5 Q. I'm showing you what has been marked</p> <p>6 as Exhibit 25. Do you recognize this document?</p> <p>7 A. I believe this is what's considered</p> <p>8 the Clarification Letter.</p> <p>9 Q. Did you rely on this in forming your</p> <p>10 opinions in this case?</p> <p>11 A. I reviewed this, yes.</p> <p>12 Q. And is it your opinion that this</p> <p>13 agreement does not encompass property held in</p> <p>14 respect of OCC accounts to secure proprietary</p> <p>15 positions of LBI as of September 19, 2008?</p> <p>16 MR. OXFORD: Objection. Form.</p> <p>17 A. I believe this does not indicate the</p> <p>18 transfer or sale of LBI assets put up as margin</p> <p>19 at the OCC.</p> <p>20 Q. If you look at the top of page 2,</p> <p>21 capital letter C in that first paragraph. And</p> <p>22 this is a definition of the purchased assets.</p> <p>23 It says, "Exchange-traded derivatives and any</p> <p>24 property that may be held to secure obligations</p> <p>25 under such derivatives." Do you see that?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes, I do.</p> <p>3 Q. Do you agree with me that this</p> <p>4 language is not limited to customer property?</p> <p>5 MR. OXFORD: Objection. Form.</p> <p>6 A. I don't know what the parenthetical</p> <p>7 really means. I think in my report, if that's</p> <p>8 what you're asking me, I think the</p> <p>9 parenthetical, to be clear, if this was margin</p> <p>10 posted, it would say -- it would say assets</p> <p>11 posted to secure LBI's obligations. It doesn't</p> <p>12 say that, so it's kind of ambiguous on what I'm</p> <p>13 holding and what this clause means.</p> <p>14 To me it means I'm holding it, which</p> <p>15 means probably customers have given it to me to</p> <p>16 secure their assets -- their transactions.</p> <p>17 Q. It doesn't strike you as ambiguous</p> <p>18 that it doesn't say customer property and you're</p> <p>19 willing to assume that any property is</p> <p>20 customer -- strike that. Do you agree with me</p> <p>21 that the language here nowhere references</p> <p>22 customer property?</p> <p>23 A. Yes.</p> <p>24 Q. Do you see the reference to any</p> <p>25 property?</p>

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<p>1 D. McIsaac</p> <p>2 A. No. I see a reference to any</p> <p>3 property.</p> <p>4 Q. No reference to customer property</p> <p>5 appears on the face of this document; is that</p> <p>6 right?</p> <p>7 MR. OXFORD: Objection. Form.</p> <p>8 A. I believe that's correct. I haven't</p> <p>9 read the rest of it, but in that clause there's</p> <p>10 nothing there. I don't know if in -- if</p> <p>11 anything in paragraph C says anything to -- you</p> <p>12 said the whole page. I don't know if anything</p> <p>13 in paragraph C says anything. I'm just looking</p> <p>14 at this clause you're talking about.</p> <p>15 Q. Uh-huh.</p> <p>16 MR. OXFORD: Just so we're clear,</p> <p>17 Trish's question was about the whole</p> <p>18 document.</p> <p>19 MS. BLOOMER: No, my question is about</p> <p>20 this parenthetical.</p> <p>21 MR. OXFORD: Okay. Then you might</p> <p>22 want to clear up the record.</p> <p>23 Q. Does this parenthetical reference the</p> <p>24 term "customer property" or does it say "any</p> <p>25 property"?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection. Form.</p> <p>3 A. It says "any property."</p> <p>4 Q. You said that you thought it would be</p> <p>5 ambiguous to say "property that may be held" if</p> <p>6 what you really meant was "property posted,"</p> <p>7 correct?</p> <p>8 A. Yes, that's correct.</p> <p>9 Q. Is it also ambiguous to say "any</p> <p>10 property" if what you mean is "customer</p> <p>11 property"?</p> <p>12 A. I'm looking at the whole phrase and it</p> <p>13 says "any property that may be held to secure."</p> <p>14 I'm looking at the whole phrase, not just the</p> <p>15 two little words. I'm looking at the whole</p> <p>16 phrase and the way it's written.</p> <p>17 Q. And does the whole phrase reference</p> <p>18 customer property?</p> <p>19 MR. OXFORD: Objection. Form. Asked</p> <p>20 and answered.</p> <p>21 A. I believe to me, my opinion, this</p> <p>22 would refer to assets held by LBI, and the only</p> <p>23 assets they would have to secure obligations on</p> <p>24 the derivatives would be with customers or for</p> <p>25 counterparties.</p>
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<p>1 D. McIsaac</p> <p>2 Q. Does the language say "any property</p> <p>3 that may be held by LBI"?</p> <p>4 A. No, but to me, my opinion held to</p> <p>5 secure, if I'm writing this, if I'm part of this</p> <p>6 agreement, I would have to be holding it, not</p> <p>7 anybody else; and holding it, I mean and I have</p> <p>8 the obligation to return it to somebody.</p> <p>9 Q. Do you think the parties could have</p> <p>10 written "it may be held by or on behalf of LBI"</p> <p>11 if that's what they intended?</p> <p>12 MR. OXFORD: Objection. Form.</p> <p>13 A. I believe they could have written "and</p> <p>14 any property posted by LBI to secure their</p> <p>15 obligations."</p> <p>16 Q. Okay. If you look with me at</p> <p>17 paragraph 8 on page 4, the third line down</p> <p>18 reads, "Any and all property of any customer,</p> <p>19 including any held by or on behalf of LBI, to</p> <p>20 secure the obligations of any customer whose</p> <p>21 accounts are being transferred to purchaser as</p> <p>22 part of the business." Do you see that?</p> <p>23 A. Yes.</p> <p>24 Q. And it says "purchaser shall receive</p> <p>25 for the account of the customer any and all</p>	<p>1 D. McIsaac</p> <p>2 property of any customer, including any held by</p> <p>3 or on behalf of LBI to secure the obligations of</p> <p>4 any customer." Do you see that?</p> <p>5 A. Just let me read it again, please.</p> <p>6 "Shall receive ..."</p> <p>7 Yes.</p> <p>8 Q. So would you agree that in this</p> <p>9 paragraph when the parties intended to limit a</p> <p>10 phrase to "customer property held by or on</p> <p>11 behalf of LBI," they said "property of any</p> <p>12 customer held by or on behalf of LBI"?</p> <p>13 MR. OXFORD: Objection to form.</p> <p>14 Q. Would you agree with that?</p> <p>15 A. What -- excuse me. What was the</p> <p>16 question?</p> <p>17 Q. Would you agree that in this paragraph</p> <p>18 when the parties intended to limit a phrase to</p> <p>19 "customer property held by or on behalf of LBI,"</p> <p>20 they said "property of any customer held by or</p> <p>21 on behalf of LBI"?</p> <p>22 A. It says here "held by or on behalf of</p> <p>23 LBI." So I'm assuming that's what they wanted</p> <p>24 it to mean, but yes, I can't read into their</p> <p>25 mind what they said because I think you were</p>

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<p>1 D. McIsaac</p> <p>2 referring is this what they meant to say, and I</p> <p>3 don't know if this is what they meant to say.</p> <p>4 This is what they said.</p> <p>5 Q. And back to page 2, they didn't say</p> <p>6 "any property of any customer," did they?</p> <p>7 A. No, they did not.</p> <p>8 Q. And they didn't say "by or on behalf</p> <p>9 of LBI," did they?</p> <p>10 A. No, they did not.</p> <p>11 Q. Okay.</p> <p>12 A. But they --</p> <p>13 Q. But you would read this language --</p> <p>14 MR. OXFORD: Excuse me, Trish. Mr.</p> <p>15 McIsaac wasn't finished with his last</p> <p>16 sentence.</p> <p>17 A. But as clearly as they defined it</p> <p>18 here, why wouldn't they have clearly defined it</p> <p>19 over here?</p> <p>20 Q. Perhaps because -- could it be because</p> <p>21 they were referring to two different categories</p> <p>22 of assets?</p> <p>23 A. I don't know, but they clearly --</p> <p>24 Q. Is that possible?</p> <p>25 A. I guess anything is possible. I don't</p>	<p>1 D. McIsaac</p> <p>2 know why they would have been so clear in a</p> <p>3 definition here and not so clear in the</p> <p>4 definition over here.</p> <p>5 Q. Did you consider that they were being</p> <p>6 perfectly clear and that they were referring to</p> <p>7 two different sets of assets and that's why they</p> <p>8 described them differently?</p> <p>9 MR. OXFORD: Objection. Form. Asked</p> <p>10 and answered.</p> <p>11 A. To me, it wasn't clear. So, no, it</p> <p>12 wouldn't have been clear to me because to me if</p> <p>13 I was transferring the margin that I had posted</p> <p>14 at exchanges, that would be the clear</p> <p>15 definition.</p> <p>16 I think over here, where they talk</p> <p>17 about -- they're talking about held by and on</p> <p>18 the behalf of LBI, that means LBI is holding it,</p> <p>19 but it may be at JPMorgan or someplace else. So</p> <p>20 I think this is fairly clear. I don't think the</p> <p>21 first clause is that clear as to what they meant</p> <p>22 by it.</p> <p>23 Q. Do you agree that exchanges and</p> <p>24 clearing corporations hold property to secure</p> <p>25 obligations of derivatives that their clearing</p>
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<p>1 D. McIsaac</p> <p>2 members hold?</p> <p>3 A. Clearing organizations require margin</p> <p>4 to be held for the obligations of the clearing</p> <p>5 member. I believe that was your question.</p> <p>6 Q. So the OCC holds property just as LBI</p> <p>7 holds property; is that right?</p> <p>8 A. That's correct, and the OCC's</p> <p>9 responsibility would be to return to me the</p> <p>10 property because I posted it with them and my</p> <p>11 responsibility no matter where it is to return</p> <p>12 that property to whoever gave it to me no matter</p> <p>13 where I posted it.</p> <p>14 Q. In your opinion does paragraph 8</p> <p>15 encompass anything that is not encompassed by</p> <p>16 the parenthetical on page 2?</p> <p>17 MR. OXFORD: Objection. Form. You</p> <p>18 mean the whole of paragraph 8 or to specific</p> <p>19 subsections you referred him to earlier?</p> <p>20 MS. BLOOMER: I mean the sentence that</p> <p>21 we've been focusing on, which starts "in</p> <p>22 connection therewith" and reads through</p> <p>23 "whose accounts are being transferred to</p> <p>24 purchaser as part of the business."</p> <p>25 Q. Do you see the language that I refer</p>	<p>1 D. McIsaac</p> <p>2 you to? Does this encompass anything, in your</p> <p>3 opinion, that's not already encompassed by</p> <p>4 paragraph C on page 2 and the parenthetical?</p> <p>5 MR. OXFORD: Objection. Form. Calls</p> <p>6 for a legal conclusion, but you can answer.</p> <p>7 A. Yeah, I mean, it's a legal document.</p> <p>8 My assumption is that on this is this is not</p> <p>9 just referring to exchange-traded derivatives,</p> <p>10 this is referring to the entire account of a</p> <p>11 customer that would be transferred to Barclays.</p> <p>12 So if they were holding equity securities at DTC</p> <p>13 for the customer, we would transfer them to</p> <p>14 Barclays.</p> <p>15 Q. And in your opinion, the parenthetical</p> <p>16 on page 2 -- do you believe that the</p> <p>17 parenthetical on page 2 is unambiguous in terms</p> <p>18 of the property that it's referring to?</p> <p>19 MR. OXFORD: Objection. Asked and</p> <p>20 answered.</p> <p>21 A. It doesn't define the property. It</p> <p>22 just defines any property that may be held to</p> <p>23 secure obligations under such derivatives.</p> <p>24 Again, I believe that's any property held by</p> <p>25 LBI, not posted by LBI, because if it was</p>

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<p>1 D. McIsaac</p> <p>2 posted, I think the words would have been used</p> <p>3 "posted" or "held by" or someplace else further</p> <p>4 clarification I think would be included.</p> <p>5 Q. Are assets posted at the OCC by LBI as</p> <p>6 of September 19, 2008 property held by the OCC</p> <p>7 to secure obligations under the derivatives held</p> <p>8 in the OCC accounts?</p> <p>9 A. I just want to make sure I have your</p> <p>10 question clear. I believe the question was, is</p> <p>11 the property held at OCC there to secure the</p> <p>12 obligations in the accounts at OCC?</p> <p>13 Q. No, that wasn't my question.</p> <p>14 A. Okay.</p> <p>15 Q. Are assets posted at the OCC by LBI</p> <p>16 property that is held by the OCC to secure</p> <p>17 obligations under the derivatives in the OCC</p> <p>18 accounts?</p> <p>19 MR. OXFORD: Objection. Form.</p> <p>20 A. It's property held by OCC. It may be</p> <p>21 excess, but it's in the accounts to secure it.</p> <p>22 Some of it may be used to secure obligations.</p> <p>23 Some of it may be excess collateral.</p> <p>24 Q. Okay. I'm showing you a document</p> <p>25 that's marked as Exhibit 690.</p>	<p>1 D. McIsaac</p> <p>2 (Exhibit 690, a document bearing Bates</p> <p>3 Nos. CGSH33921 through 922, marked for</p> <p>4 identification, as of this date.)</p> <p>5 Q. Could you take a moment to review this</p> <p>6 e-mail.</p> <p>7 (Document review.)</p> <p>8 Q. Have you had a chance to review the</p> <p>9 document?</p> <p>10 A. Yes. Yes.</p> <p>11 Q. The first sentence of the e-mail from</p> <p>12 James McDaniel at Sidley --</p> <p>13 Do you know who James McDaniel at</p> <p>14 Sidley is?</p> <p>15 A. I believe he's one of their counsels.</p> <p>16 Q. One of whose counsel?</p> <p>17 A. Sidley's counsels for the OCC.</p> <p>18 Q. For the OCC. Okay.</p> <p>19 And on September 20, this e-mail is</p> <p>20 sent. You see that it's copied to several</p> <p>21 individuals from Weil? Do you understand that</p> <p>22 to be Weil Gotshal?</p> <p>23 A. Yes.</p> <p>24 Q. And you understand that that is the</p> <p>25 law firm that represented LBHI in this</p>
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<p>1 D. McIsaac</p> <p>2 transaction?</p> <p>3 A. Uh-huh.</p> <p>4 Q. Okay. And then you see that Mr. Kobak</p> <p>5 and Mr. Giddens are also copied on this e-mail?</p> <p>6 A. Yes.</p> <p>7 Q. And that's the Trustee and his</p> <p>8 counsel, correct?</p> <p>9 A. That's correct.</p> <p>10 Q. The first sentence of the e-mail says,</p> <p>11 "To the group: OCC is seeking to confirm its</p> <p>12 understanding that the LBI accounts and all</p> <p>13 positions, cash and securities collateral that</p> <p>14 are held by OCC in respect of those accounts are</p> <p>15 intended to be transferred to Barclays and that</p> <p>16 Barclays is assuming all obligations with</p> <p>17 respect to those accounts." Do you see that?</p> <p>18 A. Yes.</p> <p>19 Q. Do you believe -- are you aware of any</p> <p>20 recipient of this e-mail responding to this and</p> <p>21 telling the OCC that Barclays was not to receive</p> <p>22 the cash and securities collateral held by the</p> <p>23 OCC in respect of the OCC accounts?</p> <p>24 A. I am not aware of anybody sending an</p> <p>25 e-mail back saying that.</p>	<p>1 D. McIsaac</p> <p>2 Q. You said earlier that the margin at</p> <p>3 the OCC was of significant value, did you not?</p> <p>4 A. Yes.</p> <p>5 Q. Would you have expected any recipient</p> <p>6 of this e-mail to raise an objection to the</p> <p>7 OCC's stated intent if they were not of the same</p> <p>8 understanding as to who would be entitled to the</p> <p>9 cash and securities collateral held by OCC in</p> <p>10 respect of the OCC accounts?</p> <p>11 MR. OXFORD: Objection. Form.</p> <p>12 A. I believe this is advising the</p> <p>13 individuals that the OCC is assuming that the</p> <p>14 assets are being transferred, and in the second</p> <p>15 paragraph it is saying, "It is our understanding</p> <p>16 that certain parts of the APA are still being</p> <p>17 negotiated."</p> <p>18 So I'm assuming in the interim while</p> <p>19 they're negotiating the final documents that the</p> <p>20 OCC wants the -- I'm guessing this is the Asset</p> <p>21 and Assumption Agreement -- Transfer and</p> <p>22 Assumption Agreement to be signed.</p> <p>23 Q. You see at the very beginning of the</p> <p>24 e-mail it says, "OCC is seeking to confirm its</p> <p>25 understanding that all cash and securities</p>

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<p>1 D. McIsaac</p> <p>2 collateral are intended to be transferred to</p> <p>3 Barclays"; Do you see that?</p> <p>4 A. Yes.</p> <p>5 Q. If it's true, as you suggest it may</p> <p>6 be, that the Purchase Agreement is still being</p> <p>7 negotiated --</p> <p>8 A. I didn't say that. I'm sorry. Mr.</p> <p>9 McDaniel is saying that.</p> <p>10 Q. Would you expect when the terms of</p> <p>11 this transaction were confirmed, that if indeed</p> <p>12 it was the case that Barclays was not to receive</p> <p>13 the cash and securities collateral held at the</p> <p>14 OCC, the Trustee and LBI would have been prudent</p> <p>15 to inform the OCC of that fact?</p> <p>16 A. Yes.</p> <p>17 MR. OXFORD: Objection. Asked and</p> <p>18 answered.</p> <p>19 Q. Have you seen any evidence in the</p> <p>20 record that either the Trustee or LBI's</p> <p>21 attorneys informed the OCC that Barclays was not</p> <p>22 intended to receive the cash and securities</p> <p>23 collateral at the OCC?</p> <p>24 A. No. I think, as I've discussed</p> <p>25 before, the Transfer and Assumption Agreement is</p>	<p>1 D. McIsaac</p> <p>2 a means to allow Barclays to start trading the</p> <p>3 next day and protecting the OCC. Whatever the</p> <p>4 agreement was regarding those assets that are</p> <p>5 being transferred and what payment had to be</p> <p>6 made for them or not be made for them would I</p> <p>7 expect to be part of an agreement.</p> <p>8 Q. Do you agree that if the parties</p> <p>9 hadn't intended for these assets at the OCC to</p> <p>10 be transferred to Barclays, it would have been</p> <p>11 prudent for them to inform the OCC of that?</p> <p>12 MR. OXFORD: Objection. Form.</p> <p>13 A. Yes. As I said, it would have been</p> <p>14 prudent, if they didn't think that all the</p> <p>15 assets should have been transferred, it would</p> <p>16 have been prudent to tell the OCC that they were</p> <p>17 not agreeing to that.</p> <p>18 Q. And have you seen any evidence in the</p> <p>19 record in which any party told the OCC that they</p> <p>20 did not intend that?</p> <p>21 A. No, I have not seen anything in the</p> <p>22 record that states that.</p> <p>23 MS. BLOOMER: I think if you'll give</p> <p>24 me a few minutes, I might be wrapped up and</p> <p>25 we can have Amy come in and start the second</p>
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<p>1 D. McIsaac</p> <p>2 part of the deposition.</p> <p>3 MR. OXFORD: Okay. Let's go off the</p> <p>4 record.</p> <p>5 THE VIDEOGRAPHER: The time is 4:13.</p> <p>6 This is the end of the tape labeled number</p> <p>7 4. We're going off the record.</p> <p>8 (Recess.)</p> <p>9 (Exhibit 691, Affidavit of Daniel</p> <p>10 McIsaac, marked for identification, as of</p> <p>11 this date.)</p> <p>12 (Exhibit 692, Supplemental Affidavit</p> <p>13 of Daniel McIsaac, marked for</p> <p>14 identification, as of this date.)</p> <p>15 (Exhibit 693, Rebuttal Report of</p> <p>16 Daniel McIsaac, marked for identification,</p> <p>17 as of this date.)</p> <p>18 THE VIDEOGRAPHER: This is the start</p> <p>19 of tape labeled number 6. The time is 4:45.</p> <p>20 We're back on the record.</p> <p>21 EXAMINATION BY</p> <p>22 MS. NEUHARDT:</p> <p>23 Q. Good afternoon, Mr. McIsaac. My name</p> <p>24 is Amy Neuhardt and I'm representing Barclays</p> <p>25 and I'm here to discuss with you the reports</p>	<p>1 D. McIsaac</p> <p>2 that I have put in front of you as Exhibits 691,</p> <p>3 692 and 693. And could you identify those for</p> <p>4 the record for me?</p> <p>5 A. 691 is my affidavit that was filed</p> <p>6 with the original motion. 69 --</p> <p>7 Q. Do you mean the original allocation</p> <p>8 motion?</p> <p>9 A. Allocation motion. I'm sorry.</p> <p>10 692 is the Supplemental Affidavit</p> <p>11 filed with the court on or about February 27,</p> <p>12 and 693 is the Rebuttal Report.</p> <p>13 Q. Okay. Very good. Now, in 691 if you</p> <p>14 could turn to paragraph 5, and in that you say,</p> <p>15 "Based on my experience in the public and</p> <p>16 private sectors, I am fully familiar with the</p> <p>17 SEC rules governing financial responsibility of</p> <p>18 SEC registered broker-dealers and the protection</p> <p>19 of customer property and with industry practices</p> <p>20 regarding the handling of customer property and</p> <p>21 compliance with SEC Customer Protection Rules."</p> <p>22 And unless I'm mistaken, which you may</p> <p>23 take a look, paragraph 2 of your Rebuttal Report</p> <p>24 contains a very similar statement. Can you just</p> <p>25 confirm that? It's the last sentence.</p>

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<p>1 D. McIsaac</p> <p>2 A. Uh-huh.</p> <p>3 Q. So are you offering opinions as an</p> <p>4 expert in any substantive area other than what</p> <p>5 you're describing in this sentence that appears</p> <p>6 in 691 and 693?</p> <p>7 A. When you say -- I'm -- if you can</p> <p>8 clarify what that means. I'm not sure what you</p> <p>9 mean by that.</p> <p>10 Q. Sure. Absolutely. In particular, are</p> <p>11 you putting yourself forth as an expert in SIPA</p> <p>12 statutory or regulatory requirements?</p> <p>13 A. No.</p> <p>14 Q. Okay. Are you putting yourself</p> <p>15 forward as an expert on the practices of SIPC</p> <p>16 trustees?</p> <p>17 A. No.</p> <p>18 Q. Okay. Are you putting yourself</p> <p>19 forward as an expert on the Bankruptcy Code?</p> <p>20 A. No.</p> <p>21 Q. All right. Now, when you say you were</p> <p>22 familiar with the SEC rules governing financial</p> <p>23 responsibility of SEC registered broker-dealers</p> <p>24 and the protection of customer property, are you</p> <p>25 purporting to be an expert in the legal</p>	<p>1 D. McIsaac</p> <p>2 interpretation of those rules?</p> <p>3 A. I have spent a good part of 30 years</p> <p>4 in the industry working on the last 20 years of</p> <p>5 the preparation of the -- my two firms weekly.</p> <p>6 I have monthly 3-3 calculations. I'm a licensed</p> <p>7 Fin. Op., Series 27, so I interpret -- I would</p> <p>8 have to review and interpret the rules and the</p> <p>9 interpretations of those rules.</p> <p>10 Q. Okay. Are you a lawyer?</p> <p>11 A. No, I am not.</p> <p>12 Q. So your testimony is based on your</p> <p>13 practice in interpreting 15c3-3, but not based</p> <p>14 on experience as a lawyer doing legal analysis;</p> <p>15 is that correct?</p> <p>16 A. I am -- sorry.</p> <p>17 MR. OXFORD: Objection. Form. You</p> <p>18 can answer.</p> <p>19 A. I'm not a lawyer and most people who</p> <p>20 work on the reserve formula I believe are not</p> <p>21 lawyers.</p> <p>22 Q. Okay. Now, when you say you are</p> <p>23 familiar with industry practices regarding the</p> <p>24 handling of customer property and compliance</p> <p>25 with SEC Customer Protection Rules, are you</p>
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<p>1 D. McIsaac</p> <p>2 purporting to be an expert in the operations and</p> <p>3 processing systems used by Lehman that were fed</p> <p>4 into the reserve calculation?</p> <p>5 MR. OXFORD: Hold on. Objection to</p> <p>6 form. Sorry.</p> <p>7 Q. By reserve calculation, I am referring</p> <p>8 to the calculation required under SEC Rule</p> <p>9 15c3-3. Will you understand that that's what I</p> <p>10 mean when I say "reserve calculation" throughout</p> <p>11 the deposition?</p> <p>12 A. The allocation formula?</p> <p>13 Q. Yes.</p> <p>14 A. Yes.</p> <p>15 MR. OXFORD: Same objection. Do you</p> <p>16 have the question in mind?</p> <p>17 A. No, maybe --</p> <p>18 Q. So when you say you were familiar with</p> <p>19 industry practices regarding the handling of</p> <p>20 customer property and compliance with SEC</p> <p>21 customer rules, are you purporting to be an</p> <p>22 expert in the operations and processing systems</p> <p>23 used by Lehman that were fed into the reserve</p> <p>24 calculation?</p> <p>25 A. When you say an expert in the systems,</p>	<p>1 D. McIsaac</p> <p>2 I am not a systems analyst. I am not a systems</p> <p>3 programmer. I --</p> <p>4 Q. Okay. So you are not familiar with --</p> <p>5 MR. OXFORD: Let him --</p> <p>6 Q. I apologize.</p> <p>7 A. That's all right.</p> <p>8 Q. I realize you weren't through.</p> <p>9 A. I am very familiar with the allocation</p> <p>10 process and what people preparing the report</p> <p>11 will look to see out of the allocation process.</p> <p>12 Q. Okay. So are you familiar with the</p> <p>13 ADP system?</p> <p>14 A. Yes, I am.</p> <p>15 Q. Okay. The ITS system?</p> <p>16 A. No, not necessarily.</p> <p>17 Q. Okay. NTS?</p> <p>18 A. I am familiar with fixed income</p> <p>19 systems.</p> <p>20 Q. Okay. And the RISC, R-I-S-C, system?</p> <p>21 A. I am not intimately familiar with it.</p> <p>22 Q. Okay. Have you ever had any prior</p> <p>23 experience in forensic accounting?</p> <p>24 A. No.</p> <p>25 Q. Okay. Now, are you aware that the</p>

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<p>1 D. McIsaac</p> <p>2 Trustee and Barclays are currently in a dispute</p> <p>3 regarding the interpretation of a contract under</p> <p>4 which Barclays purchased assets from the former</p> <p>5 Lehman Brothers estate?</p> <p>6 A. Yes, I am. I sat here through four</p> <p>7 hours of a deposition on that.</p> <p>8 Q. Yes. I just don't want a foundation</p> <p>9 objection from Neil over there.</p> <p>10 Okay. Are you purporting to offer any</p> <p>11 opinion on the interpretation of the language in</p> <p>12 that contract?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 A. I don't know if you're going to ask me</p> <p>15 a question on it, but I don't -- I don't think</p> <p>16 this allocation motion was part of -- looked</p> <p>17 at -- I might have reviewed that, but it wasn't</p> <p>18 part of reliance.</p> <p>19 Q. Have you been asked by anybody to</p> <p>20 analyze the contract?</p> <p>21 MR. OXFORD: Is your question, because</p> <p>22 as Mr. McIsaac says, we have sat through</p> <p>23 almost five hours of questioning --</p> <p>24 MS. NEUHARDT: A lot.</p> <p>25 MR. OXFORD: -- from your colleague in</p>	<p>1 D. McIsaac</p> <p>2 connection with the Asset Purchase Agreement</p> <p>3 and various other documents. It would be</p> <p>4 clearer for me and perhaps also for the</p> <p>5 witness it will make things a little quicker</p> <p>6 if you could clarify if your questions are</p> <p>7 relating solely to the three affidavits and</p> <p>8 reports that you have premarked.</p> <p>9 MS. NEUHARDT: Yes, they are.</p> <p>10 Q. I am purely asking whether you have</p> <p>11 been asked to interpret the contract as it</p> <p>12 relates to assets in the reserve accounts or</p> <p>13 substitute assets for what would be in the</p> <p>14 reserve account? That doesn't help --</p> <p>15 MR. OXFORD: I still have an objection</p> <p>16 to form, but you can answer if you're able.</p> <p>17 A. I'm not sure where you're going. I</p> <p>18 thought there was only one thing in the</p> <p>19 allocation motion that talked to the contract</p> <p>20 with Barclays, and that's the OCC deposit.</p> <p>21 Q. Okay. Have you examined any other</p> <p>22 part of the contracts other than the portion</p> <p>23 that relates to the OCC margin other than in</p> <p>24 this morning's portion of the deposition?</p> <p>25 A. In relation to?</p>
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<p>1 D. McIsaac</p> <p>2 Q. To your opinion as set forth in the</p> <p>3 three exhibits sitting in front of you?</p> <p>4 A. I don't think I placed reliance on the</p> <p>5 APA to review whether or not the 3-3 was in</p> <p>6 compliance with the rules.</p> <p>7 Q. Okay. Did you place any reliance on</p> <p>8 the Clarification Letter?</p> <p>9 A. Again, I don't know, in relation to</p> <p>10 this, if I placed any reliance on it.</p> <p>11 Q. You don't know if you placed reliance</p> <p>12 on it?</p> <p>13 A. I don't think I placed any reliance on</p> <p>14 that. I was asked to review the 3-3 allocation</p> <p>15 and what could be or compliance issues thereto.</p> <p>16 Q. Okay. If you could turn to the first</p> <p>17 exhibit in -- the first exhibit in the first</p> <p>18 exhibit, which is your resumé, and it should be</p> <p>19 tagged with a purple tag.</p> <p>20 A. Yes.</p> <p>21 Q. This is your resumé, correct?</p> <p>22 A. Yes, it is.</p> <p>23 Q. It says you have a bachelor of science</p> <p>24 in accounting from Lehman College; is that</p> <p>25 correct?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. Do you have any other formal</p> <p>4 education?</p> <p>5 A. No postgraduate. No postgraduate</p> <p>6 education.</p> <p>7 Q. So you did no work toward a degree</p> <p>8 that you then did not receive?</p> <p>9 A. No.</p> <p>10 Q. So you've taken the courses in law?</p> <p>11 A. I've taken the courses that were</p> <p>12 required for my CPA certification.</p> <p>13 Q. Did that include any courses in law?</p> <p>14 A. Yes. Business law I think was a</p> <p>15 requirement.</p> <p>16 Q. Business law, okay. All right, that's</p> <p>17 all I have about your education.</p> <p>18 Now, this shows the most recent</p> <p>19 position as you being at UBS Securities. You do</p> <p>20 not still work at UBS, do you?</p> <p>21 A. No, I left UBS in June.</p> <p>22 Q. In June of 2009?</p> <p>23 A. 9.</p> <p>24 Q. Okay. And why did you leave?</p> <p>25 A. There was downsizing at UBS.</p>

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<p>1 D. McIsaac</p> <p>2 Q. And where do you currently work?</p> <p>3 A. Currently today I work for KPMG.</p> <p>4 Q. And how long have you been at KPMG?</p> <p>5 A. Three weeks.</p> <p>6 Q. Three weeks? Okay. What's your</p> <p>7 position there?</p> <p>8 A. Director of Regulatory Advisory.</p> <p>9 Q. Okay. And did you hold any position</p> <p>10 between UBS and KPMG?</p> <p>11 A. Between then I was acting as an</p> <p>12 independent consultant.</p> <p>13 Q. And was that as independent consultant</p> <p>14 to the Trustee on this matter?</p> <p>15 A. That, and I had other clients I was</p> <p>16 doing work for.</p> <p>17 Q. Can you tell me the other clients?</p> <p>18 A. It's confidential, I would think.</p> <p>19 Q. It's confidential. All right.</p> <p>20 When did you first begin doing</p> <p>21 consulting work for the Trustee?</p> <p>22 A. On or about the middle of July.</p> <p>23 Q. Did you perform any work for Lehman</p> <p>24 Brothers Holdings, Inc. as an independent</p> <p>25 consultant?</p>	<p>1 D. McIsaac</p> <p>2 A. No.</p> <p>3 Q. Okay. Did you serve any function for</p> <p>4 the Trustee other than as an expert witness for</p> <p>5 this matter in your independent consulting?</p> <p>6 A. I provided an expert report on the</p> <p>7 derivatives, and I provided two other -- I think</p> <p>8 they're called affidavits for other issues</p> <p>9 regarding customer protection.</p> <p>10 Q. Do you know if those affidavits were</p> <p>11 filed in the public record?</p> <p>12 A. I believe they were, but I don't know.</p> <p>13 I can't say for sure.</p> <p>14 Q. Okay. And did you perform any other</p> <p>15 services for the Trustee?</p> <p>16 A. From time to time.</p> <p>17 MR. OXFORD: I'll let you answer that</p> <p>18 question yes or no, Mr. McIsaac.</p> <p>19 A. Yes.</p> <p>20 Q. Okay. I think I know what's coming.</p> <p>21 Can you describe for me the nature of</p> <p>22 the services you performed for the Trustee?</p> <p>23 MR. OXFORD: I'm going to object to</p> <p>24 the form of that question and instruct you</p> <p>25 not to answer.</p>
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<p>1 D. McIsaac</p> <p>2 MS. NEUHARDT: And what's the basis of</p> <p>3 your instruction?</p> <p>4 MR. OXFORD: It's privileged.</p> <p>5 MS. NEUHARDT: Can you describe for me</p> <p>6 the basis of the privilege?</p> <p>7 MR. OXFORD: Yes. Mr. McIsaac has</p> <p>8 been retained as a consultant by the Trustee</p> <p>9 to provide professional advice.</p> <p>10 MS. NEUHARDT: Are you representing</p> <p>11 that none of the other services that he</p> <p>12 performed for the Trustee relate in any way</p> <p>13 to his opinions that have been proffered in</p> <p>14 these three exhibits?</p> <p>15 MR. OXFORD: That is my understanding.</p> <p>16 MS. NEUHARDT: That's your</p> <p>17 representation on the record?</p> <p>18 MR. OXFORD: That's my best</p> <p>19 understanding.</p> <p>20 Q. Okay. Now, other than the positions</p> <p>21 with KPMG and your independent consulting that</p> <p>22 we have discussed, are there any other</p> <p>23 professional positions that you have held in the</p> <p>24 last 20 years that are not reflected on this</p> <p>25 resumé?</p>	<p>1 D. McIsaac</p> <p>2 A. I've been a chair -- well, it's in the</p> <p>3 resumé. So, no, everything's in the resumé.</p> <p>4 Q. Now, in your work as an independent</p> <p>5 consultant, and I'm referring specifically to</p> <p>6 your work on the expert reports that are in</p> <p>7 front of you, did you have any staff assisting</p> <p>8 you?</p> <p>9 A. No, I did not.</p> <p>10 Q. Okay. All right. I'm going to start</p> <p>11 with at UBS, could you explain to me how your</p> <p>12 position at UBS gave you experience with</p> <p>13 industry practices regarding the handling of</p> <p>14 customer property and compliance with SEC</p> <p>15 customer rules?</p> <p>16 A. Yes. I was the Fin. Op. for UBS</p> <p>17 Securities Financial Operational Principal. I</p> <p>18 signed the Focus Reports. I took all</p> <p>19 responsibility on the financial information</p> <p>20 filed with the regulators. I supervised the</p> <p>21 reserve formula calculation, the net capital</p> <p>22 calculations, the seg and secured calculations,</p> <p>23 as well as the filing of the Focus Reports.</p> <p>24 Q. Okay. And did you ever personally do</p> <p>25 the reserve calculation?</p>

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<p>1 D. McIsaac</p> <p>2 A. I worked on it as a more junior</p> <p>3 person.</p> <p>4 Q. When you were at UBS?</p> <p>5 A. No. No.</p> <p>6 Q. Was that in one of your prior</p> <p>7 positions?</p> <p>8 A. At Dean Witter I managed a group. I</p> <p>9 also did some work on it from time to time when</p> <p>10 somebody was out.</p> <p>11 Q. At Dean Witter that was not a part of</p> <p>12 your regular duties? You worked on it if</p> <p>13 someone was out?</p> <p>14 A. I supervised it. It came under my --</p> <p>15 I managed a group that did it, the people that</p> <p>16 did it.</p> <p>17 Q. Okay. You mentioned that you hold a</p> <p>18 Series 27 license. Do you hold any other</p> <p>19 professional licenses?</p> <p>20 A. No.</p> <p>21 Q. Have you in the past?</p> <p>22 A. Oh, sorry. I take that back. A CPA</p> <p>23 license.</p> <p>24 Q. I was just going to ask you.</p> <p>25 A. No. I was thinking when you say that</p>	<p>1 D. McIsaac</p> <p>2 along the lines of other series, but, yes, CPA.</p> <p>3 Q. Are you in any professional</p> <p>4 organizations?</p> <p>5 A. I'm a member of the AICPA, the New</p> <p>6 York State Society of CPAs. I'm a member of the</p> <p>7 Financial Management Division of SIFMA, the</p> <p>8 Securities Industry and Financial Markets</p> <p>9 Association. I'm past president of the</p> <p>10 Financial Markets Division, the Financial</p> <p>11 Management Division I think it's called, and up</p> <p>12 until three weeks ago when I took the job at KPM</p> <p>13 I chaired the SIFMA Capital Committee.</p> <p>14 Q. Did the AICPA study in any way SEC</p> <p>15 Rule 15c3-3?</p> <p>16 A. The AICPA has issued an audit guide</p> <p>17 for the auditing of securities broker-dealers.</p> <p>18 Q. Did you have any involvement in that?</p> <p>19 A. I might have had some involvement of</p> <p>20 it when I was at Deloitte in a past life of</p> <p>21 reviewing it possibly, but that was many</p> <p>22 editions ago.</p> <p>23 Q. Okay. And did the New York State</p> <p>24 Society for CPAs have any involvement in</p> <p>25 interpreting Rule 15c3-3?</p>
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<p>1 D. McIsaac</p> <p>2 A. No.</p> <p>3 Q. Okay. And the same question for</p> <p>4 SIFMA?</p> <p>5 A. Yes, the capital committee is</p> <p>6 intimately involved in the capital rules and</p> <p>7 Customer Protection Rules.</p> <p>8 Q. Okay. Have you ever served as an</p> <p>9 expert witness before?</p> <p>10 A. No. Four hours ago.</p> <p>11 Q. Other than in this matter?</p> <p>12 A. No.</p> <p>13 Q. Very good. Okay. Now, as an expert</p> <p>14 relating to the reports that are in front of you</p> <p>15 right now, not what you discussed with Ms.</p> <p>16 Bloomer this morning, how many hours of time</p> <p>17 have you billed to the Trustee in putting</p> <p>18 together your opinions here?</p> <p>19 A. On the two of these?</p> <p>20 Q. Uh-huh.</p> <p>21 A. I'd have to go back, but it was</p> <p>22 hundreds.</p> <p>23 Q. Can you give me a range?</p> <p>24 A. Maybe three to four hundred.</p> <p>25 Q. Do you know how much you have billed?</p>	<p>1 D. McIsaac</p> <p>2 A. No, I don't.</p> <p>3 Q. Have you ever written any</p> <p>4 publications?</p> <p>5 A. No.</p> <p>6 Q. Okay. In the -- you say you've spent</p> <p>7 hundreds of hours on these two reports. Do you</p> <p>8 have a sense of how much was devoted to the</p> <p>9 original affidavit of October 5?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 You can answer if you're able.</p> <p>12 A. Maybe a couple hundred. I don't -- I</p> <p>13 don't recall how much exactly. Probably a</p> <p>14 little bit more than 200, but I don't remember.</p> <p>15 MS. NEUHARDT: I think under the</p> <p>16 stipulation we're entitled to that</p> <p>17 information, so perhaps you can provide that</p> <p>18 to us later today or tomorrow.</p> <p>19 MR. OXFORD: I don't think I can get</p> <p>20 it to you later today, but I will certainly</p> <p>21 take your request under advisement.</p> <p>22 MS. NEUHARDT: Okay.</p> <p>23 Q. Have you ever been involved in a SIPC</p> <p>24 liquidation before?</p> <p>25 A. No.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Have you ever been involved in</p> <p>3 performing 15c3-3 calculations at the time of a</p> <p>4 merger or an acquisition?</p> <p>5 A. Yes.</p> <p>6 Q. Okay. Could you tell me when that</p> <p>7 would be?</p> <p>8 A. UBS merged with SBC on or about June</p> <p>9 29, 1998. There was a merger with various</p> <p>10 acquisitions of various assets of PaineWebber</p> <p>11 that were included as part of the acquisition of</p> <p>12 UBS Securities acquired some of the assets, and</p> <p>13 that was somewhere around November of 2000.</p> <p>14 Q. Okay.</p> <p>15 A. We at UBS purchased the prime</p> <p>16 brokerage business from ABN Amro I want to say</p> <p>17 it's around 2003, but I'm fuzzy on the time.</p> <p>18 We purchased a futures business, but</p> <p>19 that didn't have anything to do with 3-3, and</p> <p>20 probably some other asset purchases or smaller</p> <p>21 type purchase of assets or businesses along the</p> <p>22 way.</p> <p>23 Q. Okay. All right. Now we're going to</p> <p>24 get into the substance of your opinions. Under</p> <p>25 SEC Rule 15c3-3, prior to filing for</p>	<p>1 D. McIsaac</p> <p>2 liquidation, are the assets in a reserve account</p> <p>3 considered the property of the broker-dealer or</p> <p>4 the property of customers?</p> <p>5 A. The assets have to be the property of</p> <p>6 the broker-dealer because they're their assets.</p> <p>7 Q. Okay. So would customer property as</p> <p>8 defined under SEC Rule 15c3-3 ever be put in the</p> <p>9 reserve account?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 You can answer.</p> <p>12 A. Customer's property that they own,</p> <p>13 such as securities, would be included in the</p> <p>14 reserve formula based on an allocation of those</p> <p>15 assets and the use of those assets.</p> <p>16 Q. But would the securities be placed in</p> <p>17 the reserve account?</p> <p>18 A. In the 15c3 reserve account?</p> <p>19 Q. Correct.</p> <p>20 A. No.</p> <p>21 Q. Okay. Do you know how many accounts</p> <p>22 LBI had that comprised its reserve account under</p> <p>23 SEC Rule 15c3?</p> <p>24 A. You'll have to define what you mean by</p> <p>25 "accounts." I don't --</p>
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<p>1 D. McIsaac</p> <p>2 Q. Well, they -- are you aware that there</p> <p>3 was a bank account at Wells Fargo that was used</p> <p>4 for part of the reserve account?</p> <p>5 A. There was a, I believe, a reserve</p> <p>6 formula account, an account for the benefit of</p> <p>7 customers at Wells Fargo.</p> <p>8 Q. Correct. Do you know how many such</p> <p>9 accounts LBI held?</p> <p>10 A. If my memory is correct, it was three</p> <p>11 or four, I believe.</p> <p>12 Q. Okay. And do you remember what banks</p> <p>13 those were at other than Wells Fargo, which we</p> <p>14 have discussed?</p> <p>15 A. I believe there might have been</p> <p>16 something at JPMorgan, but I don't remember</p> <p>17 exactly, and I don't remember the other two.</p> <p>18 Q. What was the total amount as of</p> <p>19 September 19, 2008 that was in LBI's reserve</p> <p>20 accounts?</p> <p>21 A. I'd have to look in my report for the</p> <p>22 exact number, but I believe it was about a</p> <p>23 billion-17 -- a billion-760 million, something</p> <p>24 on that nature.</p> <p>25 Q. Could you show me in your report where</p>	<p>1 D. McIsaac</p> <p>2 you got that number?</p> <p>3 MR. OXFORD: Amy, are you asking a</p> <p>4 question where he got it or where it is in</p> <p>5 the report?</p> <p>6 MS. NEUHARDT: It's the source, what</p> <p>7 his source is for the -- his testimony that</p> <p>8 that is the total amount that was locked up</p> <p>9 as of that date.</p> <p>10 MR. OXFORD: Okay.</p> <p>11 A. So not where it is in here?</p> <p>12 Q. Hum?</p> <p>13 A. Not where --</p> <p>14 Q. Well --</p> <p>15 A. I'm confused.</p> <p>16 Q. -- if it's not in there, I would like</p> <p>17 to know what it is that you did rely upon. And</p> <p>18 we do have materials that your counsel -- LBI's</p> <p>19 counsel produced that you purported to rely on.</p> <p>20 And you can check in there if you want, but if</p> <p>21 it's attached to your report, that would be</p> <p>22 easier.</p> <p>23 A. You'll have to give me a minute to go</p> <p>24 through it. I don't know if it's ...</p> <p>25 Q. While you're looking, I can ask the</p>

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<p>1 D. McIsaac</p> <p>2 question, did you look at the bank account</p> <p>3 statements for each of the three or four</p> <p>4 accounts that we discussed earlier?</p> <p>5 A. No. The Trustee's financial</p> <p>6 professionals provided me with the schedule of</p> <p>7 what was in the accounts.</p> <p>8 Q. And by "financial professionals," who</p> <p>9 are you referring to?</p> <p>10 A. I believe it came from legal counsel.</p> <p>11 Q. From legal counsel. It didn't come</p> <p>12 from Deloitte?</p> <p>13 A. It might come from Deloitte</p> <p>14 eventually, but it was given to me by legal</p> <p>15 counsel.</p> <p>16 Q. And did you do any independent</p> <p>17 investigation of the correctness of the</p> <p>18 materials supplied to you by legal counsel?</p> <p>19 A. No.</p> <p>20 Q. You know what, why don't we have you</p> <p>21 look for that on a break and go on in an effort</p> <p>22 to --</p> <p>23 A. Sure.</p> <p>24 Q. -- save time.</p> <p>25 Under SEC Rule 15c3-3, if there is an</p>	<p>1 D. McIsaac</p> <p>2 excess in the reserve account, is that held for</p> <p>3 the exclusive benefit of customers?</p> <p>4 A. Everything in that account is held for</p> <p>5 the exclusive benefit of customers.</p> <p>6 Q. So is it your testimony that even</p> <p>7 amounts that are not required to be held there</p> <p>8 are for the benefit of customers?</p> <p>9 MR. OXFORD: Objection. Asked and</p> <p>10 answered. You can answer again.</p> <p>11 A. If it's held in there, it's for the</p> <p>12 exclusive benefit of customers.</p> <p>13 Q. Okay. Is a broker-dealer allowed to</p> <p>14 withdraw excess?</p> <p>15 MR. OXFORD: Objection. You can</p> <p>16 answer.</p> <p>17 A. A broker-dealer can make withdrawals</p> <p>18 and deposits based on calculations.</p> <p>19 Q. Okay. And is there any requirement</p> <p>20 that a broker-dealer receive SEC approval before</p> <p>21 making a withdrawal of excess?</p> <p>22 A. I do not believe there's any</p> <p>23 requirement to get the approval of the SEC in</p> <p>24 the normal course.</p> <p>25 Q. Okay. Now, you qualified your last</p>
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<p>1 D. McIsaac</p> <p>2 answer by saying you did not believe there was a</p> <p>3 requirement to get SEC approval in the normal</p> <p>4 course?</p> <p>5 A. Correct.</p> <p>6 Q. Do you believe there's a requirement</p> <p>7 to get SEC approval at any other time?</p> <p>8 A. Well, I would assume if you're in</p> <p>9 liquidation, you can't move moneys out of the</p> <p>10 account without the approval of the S.E.C., but</p> <p>11 I don't know that for a fact.</p> <p>12 Q. Okay. Are you basing your assumption</p> <p>13 on anything in SEC Rule 15c3-3?</p> <p>14 A. I don't believe anything I've seen</p> <p>15 there. What I've seen in the rules is basically</p> <p>16 you have to do a withdrawal -- a calculation</p> <p>17 before you can do a withdrawal.</p> <p>18 Q. Okay. In your rebuttal report,</p> <p>19 paragraph 13, you state that the -- I'll give</p> <p>20 you a moment to get to that. In the second</p> <p>21 sentence you state, "The only relevant point in</p> <p>22 time" --</p> <p>23 A. Excuse me. Excuse me. What</p> <p>24 paragraph?</p> <p>25 Q. 13. I'm sorry.</p>	<p>1 D. McIsaac</p> <p>2 A. Page 13.</p> <p>3 Q. No, paragraph 13, page 6.</p> <p>4 A. Oh, I'm sorry. I thought you said</p> <p>5 page 13.</p> <p>6 Q. No, my apologies.</p> <p>7 A. Okay.</p> <p>8 Q. Okay. Second sentence says, "The only</p> <p>9 relevant point in time for the purpose of</p> <p>10 determining the accuracy of LBI's reserve</p> <p>11 calculation as of September 19, 2008, is</p> <p>12 September 19, 2008."</p> <p>13 Why -- why do you believe that</p> <p>14 September 19, 2008 is the relevant date?</p> <p>15 A. That's the -- that's when the</p> <p>16 calculation is as of. So anything that has</p> <p>17 happened as of that date or known as of that</p> <p>18 date is what goes into the formula.</p> <p>19 Q. Why -- well, were you told to do a</p> <p>20 calculation as of September 19, 2008, or did you</p> <p>21 independently decide that that was the relevant</p> <p>22 date for a calculation?</p> <p>23 MR. OXFORD: Objection to the form.</p> <p>24 That misstates the facts and the evidence,</p> <p>25 and I think you're misreading his reports.</p>

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1 D. McIsaac
 2 You can answer if you can.
 3 A. I believe the 19th of September 2008
 4 was the last reserve requirement prepared by
 5 Lehman prior to entering into SIPC protection.
 6 Q. Okay. Do you know the date that LBI
 7 entered into SIPC protection?
 8 A. I believe it was sometime on or about
 9 the 19th of September.
 10 Q. Okay. Do you know if they had
 11 performed a calculation on that date prior to
 12 entering into SIPC liquidation?
 13 MR. OXFORD: Objection to form.
 14 A. I have not seen any as of September
 15 18, I don't believe.
 16 Q. Have you seen any as of the morning of
 17 September 19?
 18 A. I'm sorry, as of the morning of
 19 September 19th? As of what period of time?
 20 Q. Prior to entering into liquidation on
 21 the day of the 19th?
 22 A. Based on what period? Based on what
 23 ending period?
 24 Q. Any ending period.
 25 A. You can only do it at the end of a

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1 D. McIsaac
 2 Misstates the witness's testimony.
 3 You can answer.
 4 A. I don't think there's anything in Rule
 5 15c3-3 that says when anybody is supposed to do
 6 a calculation as opposed to the 19th. I believe
 7 it says that you do calculations as of Friday
 8 and the last business day of the month.
 9 Q. Okay.
 10 A. That was their last business day.
 11 Q. Is it your position that 15c3-3
 12 continues to apply after entering into SIPC
 13 liquidation?
 14 A. I would think you would have to do a
 15 final calc if it was a Friday close of business
 16 to account for all your assets in this process.
 17 Q. And the basis for that belief is?
 18 A. The last day of business was a Friday.
 19 I don't know if you would have to do it if the
 20 last day of business was a Wednesday, but their
 21 last day of business was a Friday.
 22 Q. So it's your position that even though
 23 at the end of the day of business on that Friday
 24 they were in liquidation, they still would have
 25 had to do a 15c3-3 calculation?

1 D. McIsaac
 2 day. You can't do it in the middle of a day.
 3 Q. Okay. So then wasn't the last
 4 calculation actually performed by LBI prior to
 5 entering into liquidation done on the 17th?
 6 A. I don't think so. I thought they were
 7 required to do a calculation as of the close of
 8 business on the 19th.
 9 Q. Even if they were no longer in
 10 business?
 11 A. I don't know what the whole rule is
 12 around SIPC, but I believe they were required to
 13 do a calculation as of the close of business the
 14 19th because that was the last day of business.
 15 Q. Could you show me in -- we can get you
 16 Rule 15c3-3. We're going to mark that as
 17 Exhibit 694.
 18 (Exhibit 694, Rule 15c3-3, marked for
 19 identification, as of this date.)
 20 Q. I've put before you SEC Rule 15c3-3.
 21 Could you tell me where in Rule 15c3-3 LBI would
 22 have been required to do a reserve calculation
 23 on the 19th despite entering into liquidation on
 24 that day?
 25 MR. OXFORD: Objection. Form.

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1 D. McIsaac
 2 A. I believe so. That's my opinion.
 3 Q. Okay. And that is based on?
 4 A. You're supposed to do calculations as
 5 of Friday or month end, and that was a Friday of
 6 business.
 7 Q. So you have no other basis for your
 8 opinion that a 15c3-3 calculation would have
 9 been required even though they had entered into
 10 liquidation on that day?
 11 A. I believe the SEC required a 3-3
 12 calculation to be done, but I don't know if I
 13 can point to anything that says that.
 14 Q. When you say the SEC required it, do
 15 you mean by rule or are you talking about events
 16 as of that day, communications that day?
 17 A. I thought by rule they required it as
 18 of the close of business on Friday. I think
 19 they -- did they go into -- I believe they went
 20 into liquidation after the markets closed, which
 21 would be the close of their business day.
 22 Q. And if that were not the case, would
 23 that change your opinion in any way?
 24 A. Then I would leave it up to the
 25 regulators to determine if a calculation had to

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<p>1 D. McIsaac</p> <p>2 be done at that point in time.</p> <p>3 Q. So you don't have an opinion, then, if</p> <p>4 the liquidation started prior to the close of</p> <p>5 business on Friday?</p> <p>6 A. If the --</p> <p>7 MR. OXFORD: Objection. Form.</p> <p>8 You can answer.</p> <p>9 A. If the liquidation was at 1 o'clock --</p> <p>10 9 o'clock in the morning, I might have a</p> <p>11 different opinion, but it was I believe after</p> <p>12 the close of business. I think it was finally</p> <p>13 approved sometime Saturday morning.</p> <p>14 Q. Okay.</p> <p>15 A. And I'm assuming --</p> <p>16 Q. I'm trying to make sure you've</p> <p>17 answered my question. I don't think we've</p> <p>18 established what time it was.</p> <p>19 If it did happen prior to the close of</p> <p>20 business, does that change your opinion?</p> <p>21 MR. OXFORD: Objection. Form.</p> <p>22 You can answer.</p> <p>23 A. I don't know. I don't have an opinion</p> <p>24 on it.</p> <p>25 Q. Okay. Now, under -- for a moment</p>	<p>1 D. McIsaac</p> <p>2 we'll assume that the 19th is the appropriate</p> <p>3 date, and I believe you said that under the</p> <p>4 SEC -- well, rather than recharacterize your</p> <p>5 testimony, how often does an operating</p> <p>6 broker-dealer have to do its reserve</p> <p>7 calculation?</p> <p>8 A. It's based on what type of</p> <p>9 broker-dealer it is. One of Lehman's stature</p> <p>10 had to do one weekly and as of month end.</p> <p>11 Q. And you said normally it was done on</p> <p>12 Friday afternoons, correct?</p> <p>13 A. As of close of business Friday and as</p> <p>14 of month end.</p> <p>15 Q. Okay. Now, if a calculation done on</p> <p>16 the -- done as of the close of business on</p> <p>17 Friday showed a shortfall, at what time would</p> <p>18 the broker-dealer be required to make up the</p> <p>19 shortfall?</p> <p>20 A. 10 A.M. the second business day</p> <p>21 following the day of closing. So on a Friday,</p> <p>22 as long as Monday was a business day, 10 o'clock</p> <p>23 Tuesday.</p> <p>24 Q. Okay. And that's under Rule 15c3-3 as</p> <p>25 well?</p>
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<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Now, in this case, Lehman was no</p> <p>4 longer operating as of 10 A.M. the following</p> <p>5 Tuesday morning, correct?</p> <p>6 A. I believe that's the case.</p> <p>7 Q. So as of Friday, the 19th, it would</p> <p>8 not have had an obligation to actually deposit a</p> <p>9 shortfall into the account?</p> <p>10 A. I believe --</p> <p>11 MR. OXFORD: Objection to form.</p> <p>12 You can answer.</p> <p>13 A. I believe Lehman was still a</p> <p>14 broker-dealer and had not issued a BDW as of</p> <p>15 that point in time.</p> <p>16 Q. I'm sorry, what is a BDW?</p> <p>17 A. Withdrawal as a broker-dealer.</p> <p>18 Q. Okay. So is it your testimony that</p> <p>19 even after filing for liquidation LBI was an</p> <p>20 operating broker-dealer?</p> <p>21 A. No. I'm saying they didn't file a BDW</p> <p>22 and still would have been, I think, required to</p> <p>23 make a deposit on Tuesday morning if they had to</p> <p>24 add to their deposit.</p> <p>25 Q. Despite the fact that a Trustee had</p>	<p>1 D. McIsaac</p> <p>2 been appointed and was running the operations?</p> <p>3 A. (Witness nods.)</p> <p>4 Yes, I'm sorry.</p> <p>5 Q. You do need to answer.</p> <p>6 A. I know that.</p> <p>7 Q. Could you show me or could you tell me</p> <p>8 what the source of your opinion on that is?</p> <p>9 A. I don't think there's anything in the</p> <p>10 literature that says that. I don't think</p> <p>11 there's anything in the literature that points</p> <p>12 to a broker-dealer going out of business on a</p> <p>13 Friday and whether or not it has to make its</p> <p>14 deposit on Tuesday.</p> <p>15 Q. So you're not basing your opinion on</p> <p>16 anything?</p> <p>17 A. Just --</p> <p>18 MR. OXFORD: Objection. Form. It's</p> <p>19 not what the witness said.</p> <p>20 But you can answer.</p> <p>21 A. Practice, common practice, and I would</p> <p>22 think they would do their last computation.</p> <p>23 Q. You say common practice. How often</p> <p>24 have you been involved in a broker-dealer that</p> <p>25 has gone into liquidation?</p>

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<p>1 D. McIsaac</p> <p>2 A. Never.</p> <p>3 Q. Okay. Let's turn to the discussion of</p> <p>4 FID accounts, and in your original report that</p> <p>5 was at paragraphs -- I didn't put it down</p> <p>6 here -- it starts on page 13 of your original</p> <p>7 report. It's relating to Fixed Income Division</p> <p>8 prime broker clients that are being referred to</p> <p>9 as FID accounts?</p> <p>10 A. That's correct.</p> <p>11 Q. In your original report you stated</p> <p>12 that securities had been liquidated by Chase, is</p> <p>13 that correct?</p> <p>14 A. That's correct.</p> <p>15 Q. And you decided that was an error for</p> <p>16 your rebuttal report; is that correct?</p> <p>17 A. No, for my additional affidavit that</p> <p>18 was put in.</p> <p>19 Q. Okay. I apologize. But your opinion</p> <p>20 on that has changed?</p> <p>21 A. That's correct.</p> <p>22 Q. Okay. Now, from where did you get the</p> <p>23 number of 891 million as being the -- yes, as</p> <p>24 being the relevant number? And for reference,</p> <p>25 that would be in paragraph 35 of your original</p>	<p>1 D. McIsaac</p> <p>2 affidavit.</p> <p>3 A. That's a combination of the 630</p> <p>4 million of assets and the 281 million -- \$258</p> <p>5 million of the cash.</p> <p>6 Q. Okay. Well, I'm not seeing citations</p> <p>7 for either the 630 million number or the 258</p> <p>8 million number. So where did you get those</p> <p>9 numbers?</p> <p>10 A. They were provided to me by the</p> <p>11 Trustee's financial advisor.</p> <p>12 Q. Did you do any independent</p> <p>13 investigation of the accuracy of those numbers?</p> <p>14 A. I reviewed some documents that would</p> <p>15 have shown the numbers there, would have shown</p> <p>16 the accounts with the balances in them and the</p> <p>17 asset value.</p> <p>18 Q. Are those documents attached to your</p> <p>19 affidavit?</p> <p>20 A. I don't know if they are or not. I</p> <p>21 don't think so.</p> <p>22 Q. Did you speak to anybody about the</p> <p>23 accuracy of those numbers?</p> <p>24 A. The Trustee and their financial</p> <p>25 advisors.</p>
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<p>1 D. McIsaac</p> <p>2 Q. By "financial advisors" are you</p> <p>3 referring to legal counsel again?</p> <p>4 A. It would have been legal counsel</p> <p>5 and/or their financial advisors, Deloitte.</p> <p>6 Q. Deloitte. Can you tell me who you</p> <p>7 spoke to at Deloitte?</p> <p>8 A. Chris Harris and Marlo Karp.</p> <p>9 I'm sorry, I didn't know if that was</p> <p>10 privileged.</p> <p>11 MR. OXFORD: If I might, let me</p> <p>12 perhaps make this go a little more smoothly.</p> <p>13 To the extent, Mr. McIsaac, you relied upon</p> <p>14 advice from Deloitte -- or, not advice, you</p> <p>15 relied on information as a source of the</p> <p>16 facts upon which you base your opinion</p> <p>17 whether in your original affidavit or</p> <p>18 supplemental affidavit or your rebuttal</p> <p>19 report, then I think it's fine for you to</p> <p>20 answer those questions.</p> <p>21 To the extent Ms. Neuhardt's questions</p> <p>22 call for discussions with Deloitte or any</p> <p>23 other person that you did not rely on as a</p> <p>24 source of information for the opinions</p> <p>25 expressed in these affidavits and reports,</p>	<p>1 D. McIsaac</p> <p>2 then I will instruct you not to answer that</p> <p>3 question.</p> <p>4 THE WITNESS: Okay. Thank you.</p> <p>5 Q. I'm trying to find out the underlying</p> <p>6 source of the facts underneath your report.</p> <p>7 A. It would have been either Chris Harris</p> <p>8 or Marlo Karp.</p> <p>9 Q. Did you speak to any employees of the</p> <p>10 Trustee?</p> <p>11 A. No, I did not. Well, employees of the</p> <p>12 Trustee? Legal counsel?</p> <p>13 Q. No.</p> <p>14 MR. OXFORD: Maybe we can clear things</p> <p>15 up. Does your question, Amy, go to the --</p> <p>16 MS. NEUHARDT: I'm going to the TSA</p> <p>17 employees, basically.</p> <p>18 MR. OXFORD: Okay. Because that's</p> <p>19 different than they're not employees of the</p> <p>20 trustee.</p> <p>21 MS. NEUHARDT: But they're performing</p> <p>22 services for him.</p> <p>23 MR. OXFORD: Sure. Maybe we can ask</p> <p>24 this again and make sure Mr. McIsaac</p> <p>25 understands the question.</p>

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<p>1 D. McIsaac</p> <p>2 Q. Are you aware that there are persons</p> <p>3 who are normally employed by Barclays who work</p> <p>4 entirely at the direction of the Trustee?</p> <p>5 MR. OXFORD: Objection.</p> <p>6 A. I'm aware that there are employees of</p> <p>7 Barclays doing work under a TSA. I don't know</p> <p>8 what they're doing or who they are.</p> <p>9 Q. When you say "TSA," what are you</p> <p>10 referring to?</p> <p>11 A. Some kind of transfer services</p> <p>12 agreement I believe is what it's call in the</p> <p>13 industry.</p> <p>14 Q. Do you understand that those employees</p> <p>15 are working for the Trustee?</p> <p>16 A. I don't know who they're working for.</p> <p>17 Q. Okay. Did you speak to any of those</p> <p>18 individuals in relation to the FID accounts?</p> <p>19 A. No.</p> <p>20 Q. Did you speak to any of those</p> <p>21 individuals in relation to anything in your</p> <p>22 reports?</p> <p>23 A. No.</p> <p>24 Q. How did you determine that the \$891</p> <p>25 million were customer assets?</p>	<p>1 D. McIsaac</p> <p>2 A. They were assets in the customer</p> <p>3 accounts that went -- that went into a -- an</p> <p>4 account at Chase designated for the benefit of</p> <p>5 customers.</p> <p>6 Q. What I'm trying to understand is what</p> <p>7 the source is for your statement that they were</p> <p>8 assets in the customer accounts.</p> <p>9 A. I received a document that listed the</p> <p>10 accounts and the account -- the accounts and the</p> <p>11 money, monetary value and the security market</p> <p>12 value in those accounts.</p> <p>13 Q. Did you do any independent</p> <p>14 investigation of the accuracy of that document?</p> <p>15 A. No, I did not. I believe I reviewed</p> <p>16 the stipulation agreement that might have also</p> <p>17 included information on those accounts.</p> <p>18 Q. Is that stipulation agreement attached</p> <p>19 to your report?</p> <p>20 A. I don't believe it is.</p> <p>21 Q. Sorry?</p> <p>22 A. No. No.</p> <p>23 MR. OXFORD: Just to move this along,</p> <p>24 Amy, are you referring to any report or a</p> <p>25 specific report?</p>
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<p>1 D. McIsaac</p> <p>2 MS. NEUHARDT: He said that there's a</p> <p>3 document he looked at that helped him</p> <p>4 determine whether or not the assets that he</p> <p>5 described in his report as FID assets --</p> <p>6 that he describes as customer assets, he</p> <p>7 said he looked at a document and that told</p> <p>8 him they were customer assets. And then I</p> <p>9 asked if he did any independent</p> <p>10 investigation, and he first said no, but</p> <p>11 then he said he may have looked at a</p> <p>12 stipulation, and I asked whether or not he</p> <p>13 attached that in his report.</p> <p>14 MR. OXFORD: Okay. Just for ease, I</p> <p>15 can represent that it's been produced to you</p> <p>16 and I believe it actually may be attached to</p> <p>17 his report, but I'll --</p> <p>18 A. Yes, you say reports. I'm not sure</p> <p>19 which report. I don't think it's in the --</p> <p>20 Q. When I say report, either any of the</p> <p>21 three reports sitting in front of you -- I guess</p> <p>22 it's two reports and one supplemental affidavit.</p> <p>23 And what was your source for stating</p> <p>24 that these particular assets were seized?</p> <p>25 A. Chase took control of the assets and</p>	<p>1 D. McIsaac</p> <p>2 did not return them to the Trustee.</p> <p>3 Q. What's your source for that?</p> <p>4 A. The documents that were provided to me</p> <p>5 by the financial.</p> <p>6 Q. On this one I'm going to need you to</p> <p>7 show me which documents. If you could look at</p> <p>8 your report and show me which documents you're</p> <p>9 using to rely on for the prospect that they were</p> <p>10 seized. I understand, but I need you to</p> <p>11 identify what you're relying on for that. So --</p> <p>12 A. I have a list of assets. I don't</p> <p>13 believe I have any -- anything -- I don't think</p> <p>14 it's in my documents. I can look for you to see</p> <p>15 in the extra documents if we provided anything</p> <p>16 from Chase showing that they were moved out of</p> <p>17 Chase's account. I believe somewhere in here we</p> <p>18 have the accounts showing zero balances in them.</p> <p>19 Q. Do you know what day they were seized</p> <p>20 if in fact they were seized?</p> <p>21 A. Chase, from my understanding, on or</p> <p>22 about the 18th of September --</p> <p>23 Q. On the 18th?</p> <p>24 A. I'm not finished.</p> <p>25 -- shut off access to Lehman to have</p>

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<p>1 D. McIsaac</p> <p>2 access to the accounts. Somewhere along that</p> <p>3 period of time, the assets were taken out of the</p> <p>4 accounts of Lehman.</p> <p>5 Q. So when you say shut off access,</p> <p>6 you're referring to shutting off electronic</p> <p>7 ability to monitor --</p> <p>8 A. Yes.</p> <p>9 Q. -- the accounts?</p> <p>10 A. The screens were shut off.</p> <p>11 Q. Are you equating that to seizure?</p> <p>12 A. No. I'm just saying that at that</p> <p>13 point in time, LBI was not aware of what was in</p> <p>14 the accounts.</p> <p>15 Q. Okay. But do you know when the assets</p> <p>16 were actually seized?</p> <p>17 A. I believe the reports that came from</p> <p>18 Chase, and I'm looking for them in here because</p> <p>19 I believe they're in here, showed that, as of</p> <p>20 the 19th, they were removed from the accounts.</p> <p>21 Q. Do you know if it was before or after</p> <p>22 LBI filed for liquidation -- sorry, filed for</p> <p>23 SIPC protection?</p> <p>24 A. I don't believe Chase put a time stamp</p> <p>25 on when they removed them out of the accounts.</p>	<p>1 D. McIsaac</p> <p>2 Q. So you don't know one way or the</p> <p>3 other?</p> <p>4 A. I'm not sure what the relevance would</p> <p>5 be of that if they had no access to those assets</p> <p>6 as of the 19th.</p> <p>7 Q. Well, again, are you equating the</p> <p>8 inability to monitor the accounts with seizure?</p> <p>9 A. No, I'm saying that they didn't know</p> <p>10 if they had them or not had them at the 19th</p> <p>11 because they had no access to their accounts.</p> <p>12 Q. Are you saying that the inability to</p> <p>13 monitor alone would make it no longer a good</p> <p>14 control location?</p> <p>15 A. No, I just said that they wouldn't</p> <p>16 have known at that point in time if they were in</p> <p>17 the accounts or not.</p> <p>18 Q. So the mere fact that they could not</p> <p>19 monitor would not have turned those accounts</p> <p>20 into a -- strike that.</p> <p>21 MR. OXFORD: And Amy, just on the</p> <p>22 seize question, maybe we could add that to</p> <p>23 the list of things you want Mr. McIsaac to</p> <p>24 look at at a break and it'll speed things up</p> <p>25 a little bit.</p>
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<p>1 D. McIsaac</p> <p>2 MS. NEUHARDT: Uh-huh.</p> <p>3 Q. Is electronic access required to be a</p> <p>4 good control location under 15c3-3?</p> <p>5 A. No.</p> <p>6 Q. Okay. So it's the seizure that is</p> <p>7 critical to your opinion on this?</p> <p>8 A. Yes.</p> <p>9 Q. But you do not know at what time on</p> <p>10 the 19th these assets were seized?</p> <p>11 A. No, I do not.</p> <p>12 Q. Okay. Now, what are the requirements</p> <p>13 of a good control location under 15c3-3?</p> <p>14 A. You should have a letter from the</p> <p>15 bank.</p> <p>16 Q. A "no lien letter"?</p> <p>17 A. Stating they have no liens on those</p> <p>18 assets.</p> <p>19 Q. Are there any other requirements?</p> <p>20 A. I believe that the language in the</p> <p>21 letter talks to no lien, except for payment of</p> <p>22 certain fees and that.</p> <p>23 Q. Now, do you know if there was a "no</p> <p>24 lien letter" from Chase with regards to these</p> <p>25 accounts?</p>	<p>1 D. McIsaac</p> <p>2 A. I believe there were "no lien letters"</p> <p>3 from Chase with these accounts.</p> <p>4 Q. Were they revoked on or before the</p> <p>5 19th?</p> <p>6 A. I believe there was certain ambiguity</p> <p>7 on whether or not those accounts were being used</p> <p>8 by Chase for credit purposes or reviewing the</p> <p>9 equity of LBI at points in time throughout the</p> <p>10 year.</p> <p>11 Q. I don't think that answers my</p> <p>12 question. Do you know if the "no lien letters"</p> <p>13 were revoked on or before the 19th?</p> <p>14 A. I do not know if they were revoked</p> <p>15 before.</p> <p>16 Q. Okay. Now, you refer in your report</p> <p>17 regarding the FID assets to an overdraft notice;</p> <p>18 is that correct?</p> <p>19 A. Which report are we talking about now?</p> <p>20 Q. Both of them, actually. I'm still</p> <p>21 just talking about the FID reports.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Did you -- did you review the</p> <p>24 overdraft notice?</p> <p>25 A. I've seen documentation that showed</p>

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<p>1 D. McIsaac</p> <p>2 that it was an overdraft at Chase.</p> <p>3 Q. Did you do any investigation into --</p> <p>4 did you do any investigation into whether or not</p> <p>5 the notice was properly issued?</p> <p>6 A. No.</p> <p>7 Q. Okay. And did you inquire --</p> <p>8 A. I --</p> <p>9 Q. Sorry?</p> <p>10 A. I said, no, I don't know what notice</p> <p>11 of properly issued would be in an overdraft</p> <p>12 account. Usually you would get a statement from</p> <p>13 the bank or you would see it online. I don't</p> <p>14 know if that constitutes a notice.</p> <p>15 Q. Did you do any investigation into</p> <p>16 whether or not Chase had acknowledged to Lehman</p> <p>17 on the 19th that the notice was improperly</p> <p>18 issued?</p> <p>19 A. What notice now?</p> <p>20 Q. You told me you reviewed an overdraft</p> <p>21 notice.</p> <p>22 A. And did Chase say that it was</p> <p>23 improperly issued? No.</p> <p>24 Q. I'm asking if you investigated whether</p> <p>25 or not that occurred?</p>	<p>1 D. McIsaac</p> <p>2 A. I did not.</p> <p>3 Q. Okay. If that in fact occurred, would</p> <p>4 that change your opinion in any way?</p> <p>5 MR. OXFORD: Objection to the form.</p> <p>6 Assumes facts not in evidence.</p> <p>7 MS. NEUHARDT: I'm sorry, I couldn't</p> <p>8 hear you.</p> <p>9 MR. OXFORD: You can answer.</p> <p>10 A. If Chase sent another report to Lehman</p> <p>11 at that time saying we originally told you you</p> <p>12 had an overdraft of 20 billion, we were wrong,</p> <p>13 you have cash of 10 billion, yes, that would</p> <p>14 have an impact on what I thought. If that's</p> <p>15 what your question was.</p> <p>16 Q. That's not my question. My question</p> <p>17 is whether if Chase informed people at Lehman</p> <p>18 that the notice was issued as a mistake, would</p> <p>19 that change your opinion?</p> <p>20 MR. OXFORD: Same objection.</p> <p>21 A. If they said that -- if they gave</p> <p>22 notice that there was no overdraft and the</p> <p>23 assets weren't used to secure the overdraft,</p> <p>24 yes, it would change my opinion.</p> <p>25 Q. Did you make any effort to determine</p>
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<p>1 D. McIsaac</p> <p>2 whether or not LBI actually attempted to</p> <p>3 withdraw any money from the Chase account on</p> <p>4 Friday, September 19?</p> <p>5 A. No, I did not.</p> <p>6 Q. Did you make any efforts to determine</p> <p>7 whether or not LBI actually attempted to</p> <p>8 withdraw any securities from the Chase account</p> <p>9 as of September 19?</p> <p>10 A. As I'm aware, the screens were shut</p> <p>11 down, so I don't know how they would have done</p> <p>12 that without electronically notifying, unless</p> <p>13 they would have done it via overnight letting</p> <p>14 Chase know what deliveries and receipts to make,</p> <p>15 but I did not do any inquiries into that.</p> <p>16 Q. Are you saying that telephone</p> <p>17 communications no longer work?</p> <p>18 A. I don't know if anybody made a</p> <p>19 telephone communication to them. I know the</p> <p>20 screens were down and that's the normal mode of</p> <p>21 moving securities.</p> <p>22 Q. So you don't actually know whether or</p> <p>23 not LBI could have had access to that -- to the</p> <p>24 cash and securities in the Chase accounts on</p> <p>25 September 19, 2008?</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Objection to form.</p> <p>3 A. I've been informed that the screens</p> <p>4 were shut down. So having access to it other</p> <p>5 than via the screens, I'm not sure how they</p> <p>6 would have it other than maybe verbal</p> <p>7 discussions with Chase.</p> <p>8 Q. The mere fact that the screens were</p> <p>9 shut down would not substantively affect their</p> <p>10 ability to withdraw money; is that correct?</p> <p>11 MR. OXFORD: Objection. Form.</p> <p>12 A. I assume they could send instructions</p> <p>13 to Chase to do it, and if Chase so desired, they</p> <p>14 could follow that.</p> <p>15 Q. Okay. If Chase in fact actually</p> <p>16 seized assets on the 19th, would that have</p> <p>17 affected the reserve calculation done by LBI on</p> <p>18 the 17th?</p> <p>19 A. If there was ambiguity or if the "no</p> <p>20 lien" language for those accounts was not in</p> <p>21 force, then yes, that would have affected any</p> <p>22 other calculation done at that point in time.</p> <p>23 Q. Have you seen any evidence that the</p> <p>24 "no lien letter" was not enforced as of the</p> <p>25 17th?</p>

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<p>1 D. McIsaac</p> <p>2 A. I have seen nothing that said they --</p> <p>3 it was not enforced at that time.</p> <p>4 Q. Would your answer be the same as of</p> <p>5 the 12th?</p> <p>6 A. The same. I have seen nothing before</p> <p>7 that time.</p> <p>8 Q. Okay. Now, if there were -- if these</p> <p>9 assets were seized on the 19th and it did cause</p> <p>10 a need to adjust the amount in the reserve</p> <p>11 account, at what time -- when would that deposit</p> <p>12 be required?</p> <p>13 A. I believe I answered that before. 10</p> <p>14 A.M. Tuesday morning, if that deposit was</p> <p>15 required.</p> <p>16 Q. Okay. Could you just tell me which</p> <p>17 regulation it is that would require a credit in</p> <p>18 the reserve formula for the seizure of assets on</p> <p>19 the 19th?</p> <p>20 A. I believe the credit goes into the</p> <p>21 reserve formula because you would have customer</p> <p>22 assets allocating to a loan.</p> <p>23 Q. Okay.</p> <p>24 A. A bank loan.</p> <p>25 Q. Is that in 15c3-3?</p>	<p>1 D. McIsaac</p> <p>2 A. Yes, it is.</p> <p>3 Q. Could you show me where in this</p> <p>4 exhibit?</p> <p>5 A. Could you give me the interpretation</p> <p>6 memos? It would be a lot easier to find it.</p> <p>7 Q. Absolutely. Yes. That would be in</p> <p>8 Exhibit 695.</p> <p>9 (Exhibit 695, Customer Protection -</p> <p>10 Reserves and Custody of Securities SEA Rule</p> <p>11 15c3-3, marked for identification, as of</p> <p>12 this date.)</p> <p>13 A. I believe it's on page 2625 of the</p> <p>14 FINRA Interpretation Handbook.</p> <p>15 Q. Okay. What portion of this on page</p> <p>16 2625?</p> <p>17 A. It says "Proprietary Bank Loans versus</p> <p>18 Customer Account Long."</p> <p>19 Q. Okay. Do you rely on anything else</p> <p>20 for your opinion that if there were assets</p> <p>21 seized, there would have to be a credit to the</p> <p>22 reserve calculation?</p> <p>23 A. I believe there are other portions</p> <p>24 within here that talk about the same thing --</p> <p>25 Q. This is the proprietary source?</p>
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<p>1 D. McIsaac</p> <p>2 A. Customer property allocating to</p> <p>3 proprietary bank loan.</p> <p>4 Q. Okay. Now, I'm going to move on to</p> <p>5 coding errors. Your rebuttal report discusses</p> <p>6 two alleged coding errors: One regarding the</p> <p>7 classification of Woodlands Bank as a customer</p> <p>8 or non-customer?</p> <p>9 A. Right.</p> <p>10 Q. And another relating to an error in</p> <p>11 the ADP system; is that correct?</p> <p>12 A. Correct.</p> <p>13 Q. Are you aware of any other alleged</p> <p>14 coding errors that would have affected the</p> <p>15 credit side of LBI's reserve calculation as of</p> <p>16 September 19, 2008?</p> <p>17 A. The ADP -- there were two instances of</p> <p>18 a ADP. It was certain accounts were not -- were</p> <p>19 picked up as customers. They should have been</p> <p>20 non-customer, as well as the allocation. But</p> <p>21 they're both this here.</p> <p>22 Q. So there's nothing other than what is</p> <p>23 discussed in your reports in the way of coding</p> <p>24 errors that you have identified?</p> <p>25 A. That I am aware of at this time, no.</p>	<p>1 D. McIsaac</p> <p>2 Q. Were you asked by the Trustee to</p> <p>3 identify transactions or events that might have</p> <p>4 required adjustments on the debit side of the</p> <p>5 reserve calculation?</p> <p>6 A. All issues brought to my attention by</p> <p>7 the Trustee would have been reviewed. There was</p> <p>8 no indication of only reviewing the credit side.</p> <p>9 In fact, the coding errors did have an impact on</p> <p>10 both the debit and credit side.</p> <p>11 Q. Okay. Did you make any independent</p> <p>12 effort to look for transactions or events that</p> <p>13 would have required an adjustment to the reserve</p> <p>14 calculation other than what was identified by</p> <p>15 the Trustee for you?</p> <p>16 A. Nothing else was brought to my</p> <p>17 attention that would have required that.</p> <p>18 Q. I understand. Did you make any</p> <p>19 independent effort to look for additional</p> <p>20 transactions or events?</p> <p>21 A. I did not.</p> <p>22 Q. Do you know if the Trustee looked for</p> <p>23 errors that would have caused an adjustment on</p> <p>24 the debit side of the reserve formula?</p> <p>25 A. I believe the Trustee and their</p>

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<p>1 D. McIsaac</p> <p>2 advisors looked for all and any adjustments that</p> <p>3 would have impacted the 9/19 calculation.</p> <p>4 Q. Do you know if the Trustee and its</p> <p>5 advisors have completed its -- their analysis of</p> <p>6 any and all adjustments that would have impacted</p> <p>7 the 9/19 calculation?</p> <p>8 A. I believe the Trustee and their</p> <p>9 advisors are still researching facts and figures</p> <p>10 as of the 19th of September, and if anything was</p> <p>11 to come to their attention, I believe they would</p> <p>12 bring it up at that point in time. It was my</p> <p>13 understanding as of the time I filed the</p> <p>14 rebuttal report that no additional items have</p> <p>15 been found.</p> <p>16 Q. So you believe the analysis is still</p> <p>17 ongoing?</p> <p>18 A. I believe it's still in process, yes.</p> <p>19 Q. But you do believe that the Trustee</p> <p>20 and its financial advisors have engaged in the</p> <p>21 process?</p> <p>22 MR. OXFORD: Objection. Form.</p> <p>23 Q. Do you understand the question?</p> <p>24 A. I don't know what process you're</p> <p>25 talking about they engaged in.</p>	<p>1 D. McIsaac</p> <p>2 Q. The process of identifying -- the</p> <p>3 process of identifying any and all adjustments</p> <p>4 that would have impacted the 9/19 calculation?</p> <p>5 A. I believe they're still doing work as</p> <p>6 it relates to 9/19, and as I said in my rebuttal</p> <p>7 report, I don't think anything came to their</p> <p>8 attention by the time I filed that report.</p> <p>9 Q. Okay. In paragraph 16 of your</p> <p>10 rebuttal report, you say that the Woodland</p> <p>11 assets had actually been seized. What did you</p> <p>12 base that on?</p> <p>13 A. They were part of the assets that were</p> <p>14 in the free box that was taken by Chase.</p> <p>15 Q. So it's the same Chase matter as we've</p> <p>16 already discussed?</p> <p>17 A. No. These were never locked up in a</p> <p>18 seg account because the account was coded as a</p> <p>19 non-customer, not a customer.</p> <p>20 Q. On what day do you believe these were</p> <p>21 seized?</p> <p>22 A. When Chase seized all the assets</p> <p>23 versus the bank loan, which I assume was the</p> <p>24 19th.</p> <p>25 Q. Which you assume was the 19th?</p>
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<p>1 D. McIsaac</p> <p>2 A. Yes.</p> <p>3 Q. Okay. In rebuttal paragraph 18, this</p> <p>4 is referring to I believe the ADP Broadridge</p> <p>5 issue?</p> <p>6 A. Uh-huh.</p> <p>7 Q. You say that, "As part of a review</p> <p>8 performed by Barclays," and you emphasize "by</p> <p>9 Barclays," "at the request of the S.E.C.,</p> <p>10 Barclays performed a partial recalculation of</p> <p>11 the reserve formula to adjust for these known</p> <p>12 discrepancies which revealed, as a result of the</p> <p>13 coding errors, a \$213 million shortfall."</p> <p>14 And I -- you can turn to Exhibit 8 if</p> <p>15 you want, that's what you cite, but I'd like to</p> <p>16 know what your basis is for saying that Barclays</p> <p>17 did a recalculation --</p> <p>18 A. I believe Barclays employees were the</p> <p>19 ones sending the information to ADP and</p> <p>20 requesting that a recalculation was done.</p> <p>21 Q. Okay. And do you know whether those</p> <p>22 Barclays employees were Barclays employees</p> <p>23 performing work for the Trustee under the TSA?</p> <p>24 A. I don't know in what capacity, but the</p> <p>25 letterhead on the note to ADP at Broadridge was</p>	<p>1 D. McIsaac</p> <p>2 Barclays.</p> <p>3 Q. I'm going to mark as Exhibit 696 a</p> <p>4 declaration of Robert Martini dated April 5,</p> <p>5 2010, and after she hands it to you my first</p> <p>6 question will be have you seen it before.</p> <p>7 (Exhibit 696, Declaration of Robert</p> <p>8 Martini, marked for identification, as of</p> <p>9 this date.)</p> <p>10 A. No, I have not.</p> <p>11 Q. Would you read paragraphs 5 through 7?</p> <p>12 Let me know when you're through.</p> <p>13 (Document review.)</p> <p>14 A. I've read it. I'm sorry, 5 through 7?</p> <p>15 Okay.</p> <p>16 Q. Okay. Assuming that what Mr. Martini</p> <p>17 says in his declaration is true, would that</p> <p>18 change your opinion that Barclays performed a</p> <p>19 recalculation of the reserve formula as set</p> <p>20 forth in paragraph 18 of your rebuttal report?</p> <p>21 A. I saw a letter going from Barclays to</p> <p>22 Broadridge directing them to make the changes.</p> <p>23 They did all the research and directed them to</p> <p>24 make the changes. Whether the employees who</p> <p>25 actually did the calculation were TSA employees</p>

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<p>1 D. McIsaac</p> <p>2 or Barclays employees I do not know. I don't</p> <p>3 have the name of the employee who did it.</p> <p>4 Q. Okay. Did you speak to any of the</p> <p>5 employees on that letter?</p> <p>6 A. No, I did not.</p> <p>7 Q. Okay. Do you know if the</p> <p>8 recalculation that is discussed in paragraph 18</p> <p>9 of your Rebuttal Report was a complete</p> <p>10 recalculation of the 15c3-3 requirement as of</p> <p>11 9/19 or just an adjustment for the ADP</p> <p>12 Broadridge issue?</p> <p>13 A. I believe I said in here it was just</p> <p>14 an adjustment for the ADP Broadridge as well as</p> <p>15 the clarification of the 944 accounts.</p> <p>16 Q. By the 944 accounts, you're referring</p> <p>17 to the Woodland Bank?</p> <p>18 A. No.</p> <p>19 Q. No. What are you referring to?</p> <p>20 A. 944 accounts were other accounts</p> <p>21 classified as customers that should have been</p> <p>22 reclassified as non-customer.</p> <p>23 MS. NEUHARDT: I'm probably at a</p> <p>24 halfway point if you want to take a short</p> <p>25 break.</p>	<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Okay. That would be</p> <p>3 great.</p> <p>4 MS. NEUHARDT: There were two</p> <p>5 things we wanted him to look for.</p> <p>6 Let's go off the record.</p> <p>7 THE VIDEOGRAPHER: The time is 5:54.</p> <p>8 This is the end of the tape labeled number</p> <p>9 6. We're going off the record.</p> <p>10 (Recess.)</p> <p>11 THE VIDEOGRAPHER: This is the start</p> <p>12 of tape labeled number 7. The time is 6:23.</p> <p>13 We are back on the record.</p> <p>14 MS. NEUHARDT: Mr. Oxford, based on</p> <p>15 our conversation off the record, you have</p> <p>16 some statements to put on the record about</p> <p>17 what Mr. McIsaac found during the break?</p> <p>18 MR. OXFORD: Yes. Mr. McIsaac, you</p> <p>19 had referenced a stipulation in response to</p> <p>20 some questions that Amy asked you in</p> <p>21 connection with the FID issue?</p> <p>22 THE WITNESS: Right.</p> <p>23 MR. OXFORD: Could you turn to your</p> <p>24 Rebuttal Report, Exhibit 1, please.</p> <p>25 THE WITNESS: Right.</p>
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<p>1 D. McIsaac</p> <p>2 MR. OXFORD: Can you identify what</p> <p>3 Exhibit 1, please?</p> <p>4 THE WITNESS: The substitution</p> <p>5 agreement. I apologize for calling it a</p> <p>6 stipulation. Agreement.</p> <p>7 MR. OXFORD: Is that the document you</p> <p>8 referred to when you were talking about the</p> <p>9 stipulation?</p> <p>10 THE WITNESS: Yes, it was.</p> <p>11 MR. OXFORD: And can you also identify</p> <p>12 for me what Exhibit 2 is to your Rebuttal</p> <p>13 Report?</p> <p>14 THE WITNESS: Exhibit 2 is the summary</p> <p>15 by account of all of the FID accounts and</p> <p>16 the assets that they had in their accounts</p> <p>17 as of the 19th of September.</p> <p>18 MR. OXFORD: Okay. Thank you. And</p> <p>19 then the other issue that I just wanted to</p> <p>20 clear up, if you could turn to your original</p> <p>21 affidavit, which is Exhibit 691.</p> <p>22 THE WITNESS: Right, those were in</p> <p>23 693.</p> <p>24 MR. OXFORD: Yes. And these are not</p> <p>25 tabbed, but I'd like you to find Exhibit 28,</p>	<p>1 D. McIsaac</p> <p>2 if you could.</p> <p>3 THE WITNESS: So much easier if it was</p> <p>4 tabbed.</p> <p>5 MS. NEUHARDT: It's been discussed.</p> <p>6 THE WITNESS: Okay, yes.</p> <p>7 MR. OXFORD: Do you have Exhibit 28 in</p> <p>8 front of you, sir?</p> <p>9 THE WITNESS: Yes, I do.</p> <p>10 MR. OXFORD: Was that the memorandum</p> <p>11 you referred to in your earlier testimony</p> <p>12 that was from Barclays Capital to</p> <p>13 Broadridge?</p> <p>14 THE WITNESS: Right. This was the</p> <p>15 memo that went from Barclays to Broadridge</p> <p>16 Capital.</p> <p>17 MR. OXFORD: Is it your understanding</p> <p>18 this was an analysis or review that was</p> <p>19 conducted by these individuals on behalf of</p> <p>20 LBI or Barclays Capital?</p> <p>21 THE WITNESS: I believe they were</p> <p>22 Barclays Capital employees. They reviewed</p> <p>23 LBI and I think at the same time they</p> <p>24 conducted a similar review of Barclays</p> <p>25 Capital reports to determine whether or not</p>

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<p>1 D. McIsaac</p> <p>2 they were the same issue in the ADP or</p> <p>3 Broadridge allocation matrix.</p> <p>4 MR. OXFORD: Okay. Thank you.</p> <p>5 MS. NEUHARDT: Neil, I believe you</p> <p>6 also said that you would provide for us --</p> <p>7 you would review and identify for us the</p> <p>8 materials on which you relied for his</p> <p>9 testimony that the total amount of cash and</p> <p>10 securities in the reserve account as of 9/19</p> <p>11 was roughly 1.769 billion; is that correct?</p> <p>12 MR. OXFORD: Yes, we will undertake to</p> <p>13 do that.</p> <p>14 MS. NEUHARDT: And that you would do</p> <p>15 the same for Mr. McIsaac's testimony that</p> <p>16 the assets at Chase were seized on September</p> <p>17 19, 2008?</p> <p>18 MR. OXFORD: Yes. Again, we'll</p> <p>19 undertake to review the reliance materials</p> <p>20 that were produced to you.</p> <p>21 BY MS. NEUHARDT:</p> <p>22 Q. Do you still have your report opened</p> <p>23 to Exhibit 28, which we were just discussing?</p> <p>24 A. I found it very quick.</p> <p>25 Q. Is it your testimony that this is</p>	<p>1 D. McIsaac</p> <p>2 your -- is the basis for your statement in</p> <p>3 paragraph 18 of your rebuttal that Barclays</p> <p>4 performed a partial recalculation of the reserve</p> <p>5 formula to adjust for the discrepancies</p> <p>6 discussed in this portion of your rebuttal</p> <p>7 report?</p> <p>8 A. Yes, I believe on or about January</p> <p>9 2009, the allocation report was rerun and the</p> <p>10 adjustments were made to it.</p> <p>11 Q. But your basis for that statement,</p> <p>12 that it was rerun in January, is not this</p> <p>13 memorandum, is it?</p> <p>14 A. This is the memorandum I believe to</p> <p>15 Broadridge pointing out the issues and</p> <p>16 requesting I thought to be rerun.</p> <p>17 Q. But this does not state that Barclays</p> <p>18 actually reran the calculation, does it?</p> <p>19 A. I don't believe it does, no.</p> <p>20 Q. Okay.</p> <p>21 MR. OXFORD: Amy, not to interrupt,</p> <p>22 but it occurs to me that there was a</p> <p>23 document I marked at Mr. Vinella's</p> <p>24 deposition that might be the one your</p> <p>25 looking for.</p>
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<p>1 D. McIsaac</p> <p>2 MS. NEUHARDT: We can talk about that</p> <p>3 off the record, but that's --</p> <p>4 MR. OXFORD: Okay.</p> <p>5 MS. NEUHARDT: If he -- are you saying</p> <p>6 that he relied on that document?</p> <p>7 MR. OXFORD: That may be the document</p> <p>8 he relied upon. I don't have it with me</p> <p>9 today, but -- but I'm happy to review it and</p> <p>10 let you know if that was what he relied</p> <p>11 upon.</p> <p>12 Q. Okay. And then you also referred to</p> <p>13 Exhibit 2 to your original -- no, I'm sorry,</p> <p>14 your rebuttal?</p> <p>15 A. Rebuttal.</p> <p>16 Q. Yes. And can you tell me what Exhibit</p> <p>17 2 is?</p> <p>18 A. Exhibit 2 is a schedule of all the FID</p> <p>19 accounts and the assets in their accounts on</p> <p>20 9/19, and these were the assets that were at</p> <p>21 Chase.</p> <p>22 Q. And from whom did you receive this?</p> <p>23 A. From the financial advisors of the</p> <p>24 Trustee.</p> <p>25 Q. And did you rely upon a non-redacted</p>	<p>1 D. McIsaac</p> <p>2 version of this document?</p> <p>3 A. I believe I did. I believe it had the</p> <p>4 names of the customers in there.</p> <p>5 MS. NEUHARDT: We would like that</p> <p>6 document, Neil.</p> <p>7 MR. OXFORD: I'll take your request</p> <p>8 under advisement.</p> <p>9 Q. And from this document you believe you</p> <p>10 were able to determine that these were customer</p> <p>11 assets?</p> <p>12 A. These are the account numbers for the</p> <p>13 customers and they showed the ranges of where</p> <p>14 the accounts were in the customer range.</p> <p>15 Q. Can you show me what on here is</p> <p>16 telling you that?</p> <p>17 A. The redacted portion doesn't have the</p> <p>18 account numbers.</p> <p>19 Q. The redacted portions.</p> <p>20 We definitely need the unredacted</p> <p>21 version.</p> <p>22 Did you do any research to confirm</p> <p>23 that there were no subordination agreements</p> <p>24 associated with these accounts?</p> <p>25 A. These accounts were all listed as</p>

<p style="text-align: right;">Page 306</p> <p>1 D. McIsaac</p> <p>2 customers. So, no, I did not do any</p> <p>3 subordination -- review to see if any customers</p> <p>4 in the FID subordinated their accounts to the</p> <p>5 Trustee. But if they did, then I don't know why</p> <p>6 they would be locked up in a separate account at</p> <p>7 Chase to the benefit of customers.</p> <p>8 MS. NEUHARDT: Strike the last part of</p> <p>9 his answer as nonresponsive. Okay.</p> <p>10 Q. I think we've followed up on</p> <p>11 everything from the break. I would like to turn</p> <p>12 to your discussion of -- in your rebuttal</p> <p>13 report, it's paragraphs 19 through 21; in your</p> <p>14 original report, it is paragraphs 39 and 40; and</p> <p>15 you refer to it as "Assets Subject to LBI</p> <p>16 Administration."</p> <p>17 What is your basis for stating that</p> <p>18 the 439 million in assets that you have</p> <p>19 identified are customers assets?</p> <p>20 A. These were assets in a box listed as</p> <p>21 customer box, customer security -- customer no</p> <p>22 lien account at LBIE for the benefit of LBI</p> <p>23 customers.</p> <p>24 Q. Did you do any independent</p> <p>25 investigation of that?</p>	<p style="text-align: right;">Page 307</p> <p>1 D. McIsaac</p> <p>2 A. I reviewed the LBIE agreement that</p> <p>3 said that they were holding account free of</p> <p>4 lien.</p> <p>5 Q. When say LBIE you're referring to</p> <p>6 L-B-I-E, right?</p> <p>7 A. Yes.</p> <p>8 They give control location memos to</p> <p>9 the SEC.</p> <p>10 Q. Okay. Were you -- were you aware of a</p> <p>11 general policy at LBI that they would include</p> <p>12 LBIE customers assets -- I'm sorry, LBI customer</p> <p>13 assets that were held by LBIE in their lockup</p> <p>14 requirement calculation?</p> <p>15 A. I don't understand the question. I'm</p> <p>16 sorry.</p> <p>17 Q. Okay. Well, do you know whether as a</p> <p>18 matter of course LBI would in fact include in</p> <p>19 its reserve calculation an adjustment for the</p> <p>20 LBI customer assets that were held by LBIE?</p> <p>21 A. I saw nothing in the calculations that</p> <p>22 led me to believe that they were not -- that</p> <p>23 they were not considered them in a good control</p> <p>24 location and, therefore, putting a credit in the</p> <p>25 reserve formula.</p>
<p style="text-align: right;">Page 308</p> <p>1 D. McIsaac</p> <p>2 Q. Did you ask -- did you speak to</p> <p>3 anybody about this issue?</p> <p>4 A. I did not speak to any Lehman or</p> <p>5 Barclays employees.</p> <p>6 Q. Okay. If in fact there was an</p> <p>7 adjustment as a matter of course at LBI -- for</p> <p>8 LBI customer assets held at LBIE, would that</p> <p>9 change your opinion in any way?</p> <p>10 MR. OXFORD: Objection to form.</p> <p>11 A. If the 439 that I believe allocated to</p> <p>12 a good control location and, therefore, was not</p> <p>13 put into the formula, if somebody could show me</p> <p>14 the adjustment putting that \$439 million into</p> <p>15 the formula, I guess I would change my opinion,</p> <p>16 but I'm not sure why they would get a good</p> <p>17 control letter and then do that, but ...</p> <p>18 Q. Your testimony is, though, that you</p> <p>19 don't know one way or the other, correct?</p> <p>20 A. I did not see anything to that.</p> <p>21 Q. All right. Let's turn to your</p> <p>22 discussion of the OCC deposit, which is in your</p> <p>23 rebuttal report, paragraphs 24 and 25 on pages</p> <p>24 11 and 12, and in your original report it is</p> <p>25 paragraph 45 on page 17.</p>	<p style="text-align: right;">Page 309</p> <p>1 D. McIsaac</p> <p>2 Now, is a broker-dealer able to</p> <p>3 withdraw and transfer margin at the OCC without</p> <p>4 funding the reserve account at the time of the</p> <p>5 withdrawal?</p> <p>6 A. Yes.</p> <p>7 Q. Okay. Let's go, earlier today we</p> <p>8 talked about the statement in paragraph 13 of</p> <p>9 your rebuttal affidavit that the only relevant</p> <p>10 point in time for the purpose of determining the</p> <p>11 accuracy of LBI's reserve calculation is</p> <p>12 September 19, 2008?</p> <p>13 A. That's correct.</p> <p>14 Q. Do you believe that that principle</p> <p>15 applies to your opinion about the OCC deposit?</p> <p>16 MR. OXFORD: Objection. Form.</p> <p>17 A. I believe that opinion applies to it.</p> <p>18 Q. Okay. Had the OCC margin deposit that</p> <p>19 you refer to in your reports been withdrawn as</p> <p>20 of September 19?</p> <p>21 A. No, but in previous discussions</p> <p>22 earlier this morning on my expert report, the</p> <p>23 Barclays lawyers were assuming that the margin</p> <p>24 was being transferred to LBI as of the 17th, so</p> <p>25 if -- if to -- I'm sorry, to Barclays as of the</p>

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<p>1 D. McIsaac</p> <p>2 17th.</p> <p>3 If LBI had agreed to transfer that</p> <p>4 money, then I would assume that it was not a</p> <p>5 good debit in the formula because it was</p> <p>6 impaired.</p> <p>7 Q. Well, by that logic, as of the 17th,</p> <p>8 hadn't LBI agreed to transfer, for example, all</p> <p>9 of its private investment management accounts to</p> <p>10 Barclays as of a later date?</p> <p>11 MR. OXFORD: Objection. Form.</p> <p>12 A. I believe they determined what they</p> <p>13 were going to transfer. Until you transfer the</p> <p>14 customers' assets and the customer accounts,</p> <p>15 they're still included in the reserve formula</p> <p>16 until such time as you can transfer them.</p> <p>17 If you have impeded an asset, then I</p> <p>18 don't think you could put it into the formula,</p> <p>19 just as if I had a customer receivable that</p> <p>20 wasn't fully secured, I wouldn't put it in the</p> <p>21 formula.</p> <p>22 So if this deposit was sold to</p> <p>23 somebody else prior to the 19th, then I think it</p> <p>24 probably doesn't belong in the formula as of the</p> <p>25 19th.</p>	<p>1 D. McIsaac</p> <p>2 Q. Now, do you know whether the contract</p> <p>3 had been approved by the court prior to -- well,</p> <p>4 you said the 17th. Do you know if that contract</p> <p>5 had been approved by the court as of the 17th?</p> <p>6 A. I don't know when the contract was</p> <p>7 approved. I believe it was sometime after the</p> <p>8 fact, but if, as of the 17th, you agreed to sell</p> <p>9 it and gave up your rights to that deposit, then</p> <p>10 I don't know if that would be a good debit in</p> <p>11 the formula. And I'm just going by what</p> <p>12 everybody was saying, that the -- they agreed to</p> <p>13 sell the margin prior to that and that thought</p> <p>14 process.</p> <p>15 Q. Could you show me -- well, are you</p> <p>16 basing your opinion on anything in Rule 15c3-3?</p> <p>17 A. I believe there are many parts of 3-3</p> <p>18 that would talk about unsecured receivables and</p> <p>19 how they would not go into the formula. This is</p> <p>20 allowed in the formula because it's coming from</p> <p>21 a clearing org. receivable. If you have given</p> <p>22 up your rights to that receivable, then I don't</p> <p>23 think you would include it in the formula.</p> <p>24 Q. And is your position that LBI had</p> <p>25 given up its rights as of the 17th prior to</p>
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<p>1 D. McIsaac</p> <p>2 court approval?</p> <p>3 MR. OXFORD: Objection. Form.</p> <p>4 Misstates the witness's testimony.</p> <p>5 You can answer the question again.</p> <p>6 A. No, my opinion is if it's determined</p> <p>7 that that margin was sold prior to the 19th, or</p> <p>8 as of the 19th, then it does not belong as a</p> <p>9 debit in the formula.</p> <p>10 Q. Is your opinion that a contract that</p> <p>11 has not yet been closed nonetheless affects the</p> <p>12 15c3-3 calculation?</p> <p>13 A. My opinion is if you tell me you have</p> <p>14 impeded that asset and you -- you have</p> <p>15 effectively given up your right to that asset, I</p> <p>16 would say that asset's not a good asset in the</p> <p>17 formula. And that's all I'm saying. I'm not --</p> <p>18 I don't know when the contract was sold.</p> <p>19 I'm being told, and people are</p> <p>20 negotiating that -- and I think this would be</p> <p>21 decided by the court eventually -- that the</p> <p>22 agreement sold the margin to Barclays as of the</p> <p>23 17th if that's the date of the agreement and</p> <p>24 that's when that account -- that's when that</p> <p>25 asset stopped becoming I believe a good asset</p>	<p>1 D. McIsaac</p> <p>2 for LBI for reserve formula purposes.</p> <p>3 They have given up their right to</p> <p>4 receive that asset. I don't think they can put</p> <p>5 a debit in there. The same as if I told a stock</p> <p>6 borrow counterparty don't give me your money</p> <p>7 back, I don't care. It wouldn't go in the</p> <p>8 formula.</p> <p>9 Q. If it were to turn out that the --</p> <p>10 they had not given up their rights until such</p> <p>11 time as the court approved of the contract,</p> <p>12 would that change your opinion?</p> <p>13 MR. OXFORD: Objection. Form.</p> <p>14 A. I don't know what the date would be</p> <p>15 that they agreed to the contract. I -- this --</p> <p>16 I think this will be going in front of the court</p> <p>17 eventually and the court will decide whether or</p> <p>18 not the contract stays -- states that that was</p> <p>19 being sold as at that point in time.</p> <p>20 If that's the point in time I believe</p> <p>21 the contract was effective or signed</p> <p>22 theoretically agreed to as of the 19th, I don't</p> <p>23 know if it matters when it's signed. If I have</p> <p>24 agreed to impede an asset at any point in time,</p> <p>25 it doesn't matter when I sign it. I think I</p>

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<p>1 D. McIsaac</p> <p>2 would not include that debit in the reserve</p> <p>3 formula.</p> <p>4 Q. So even if a court were to determine</p> <p>5 that the contract was not effective until it</p> <p>6 were approved, it's nonetheless your opinion</p> <p>7 that the asset would be impeded as of the time</p> <p>8 they signed?</p> <p>9 A. As of the time that somebody agreed</p> <p>10 that that asset was not an asset of theirs, that</p> <p>11 they have sold -- they have given that asset</p> <p>12 away, they sold that asset, I can't see how that</p> <p>13 asset would be good for the -- as a debit in the</p> <p>14 reserve formula.</p> <p>15 Q. Do you believe LBIE -- sorry, LBI</p> <p>16 continued to be able to withdraw from that OCC</p> <p>17 account after the 17th?</p> <p>18 A. I believe there were some restrictions</p> <p>19 at the OCC on the 19th that they could not</p> <p>20 withdraw moneys out of there on the 19th.</p> <p>21 Q. The restrictions were imposed by the</p> <p>22 OCC, correct?</p> <p>23 A. Yes, they were.</p> <p>24 Q. They were not imposed by Barclays?</p> <p>25 A. I don't think Barclays imposed them,</p>	<p>1 D. McIsaac</p> <p>2 no.</p> <p>3 Q. So it's not the contract that was</p> <p>4 preventing them from withdrawing assets after</p> <p>5 the 17th?</p> <p>6 A. As I stated earlier today, you weren't</p> <p>7 here, that I would have anticipated the purchase</p> <p>8 agreement to have some indication that they were</p> <p>9 selling margin and at that point in time to talk</p> <p>10 about the amount of margin that was being sold.</p> <p>11 But once you've given up that right,</p> <p>12 whether it be 500 million for a billion, I don't</p> <p>13 think you can put it in the formula anymore.</p> <p>14 Q. But they could withdraw it from the</p> <p>15 OCC account?</p> <p>16 A. And if it wasn't in the OCC account,</p> <p>17 it wouldn't be a debit in the formula either.</p> <p>18 Q. I understand, but I'm trying to</p> <p>19 understand. Essentially you're saying that the</p> <p>20 asset was impaired as of the date the contract</p> <p>21 was signed; is that correct?</p> <p>22 A. I'm saying if the -- if the court</p> <p>23 determines that that is what happened on the --</p> <p>24 as of the Asset Purchase Agreement and that the</p> <p>25 margin was being sold by Lehman to Barclays,</p>
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<p>1 D. McIsaac</p> <p>2 that that debit should not be in the formula</p> <p>3 because they have given up their right to</p> <p>4 receive that debit and it is no longer there for</p> <p>5 the protection of customers.</p> <p>6 Q. Yet you're also saying they</p> <p>7 nonetheless had the right to withdraw those</p> <p>8 funds prior to the -- or after the 17th from the</p> <p>9 OCC?</p> <p>10 A. And had they withdrawn those funds,</p> <p>11 they wouldn't be in the formula.</p> <p>12 Q. But they wouldn't be in the formula</p> <p>13 for a different reason, correct? Because they</p> <p>14 had been withdrawn?</p> <p>15 A. That's right, and I don't --</p> <p>16 Q. And not because --</p> <p>17 A. And I don't know if the agreement -- I</p> <p>18 didn't see anything in the agreement stipulated</p> <p>19 that the amount that was there as of the 17th is</p> <p>20 what was being sold, if the amount was there at</p> <p>21 the end of the day is what was being sold or if</p> <p>22 anything was being sold.</p> <p>23 If, if it's determined that that \$507</p> <p>24 million was being sold and that it was impaired</p> <p>25 by the 19th by the thought process of selling</p>	<p>1 D. McIsaac</p> <p>2 it, I don't think the debit should have been in</p> <p>3 the formula.</p> <p>4 Q. And yet you nonetheless believe that</p> <p>5 if they also contracted to transfer tens of</p> <p>6 thousands of customer accounts in that same</p> <p>7 contract, that that transfer of customer</p> <p>8 accounts should not be included in the 15c3-3</p> <p>9 calculation?</p> <p>10 MR. OXFORD: Objection.</p> <p>11 A. No, I said the --</p> <p>12 MR. OXFORD: Objection to form.</p> <p>13 A. The customer accounts should be</p> <p>14 included in the calculation until such time as</p> <p>15 they're transferred. If you're putting a debit</p> <p>16 in the formula, effectively reducing your lockup</p> <p>17 requirement because you have a good asset,</p> <p>18 that's what I'm saying, if that was impeded, I</p> <p>19 don't believe there should have been a debit in</p> <p>20 the formula.</p> <p>21 Q. If there's no adjustment to the debit</p> <p>22 after withdrawal, why is an adjustment by an</p> <p>23 agreement to withdraw on a later date required?</p> <p>24 A. As far as I'm concerned, the agreement</p> <p>25 should have stipulated if there was an asset to</p>

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<p>1 D. McIsaac</p> <p>2 be sold, what amount was to be sold, or what</p> <p>3 amount at what point in time should have been</p> <p>4 sold.</p> <p>5 What I am saying if, if in fact the</p> <p>6 court determines that that was a valid</p> <p>7 transaction and that LBI gave up its rights to</p> <p>8 this debit, that it should not have been in the</p> <p>9 formula as of the 19th.</p> <p>10 Q. And do you know whether the contract</p> <p>11 stipulated an amount to be sold or at what point</p> <p>12 in time to determine the amount to be sold?</p> <p>13 A. No, I did not.</p> <p>14 Q. So if in fact the amount was not</p> <p>15 limited to \$507 million or the date as of which</p> <p>16 the transfer would be made was later than 9/19,</p> <p>17 does your opinion change in any way?</p> <p>18 MR. OXFORD: Objection.</p> <p>19 A. If at any point --</p> <p>20 MR. OXFORD: Objection to the form.</p> <p>21 A. Sorry.</p> <p>22 If at any point in time that was</p> <p>23 determined that they had given up their rights</p> <p>24 to that asset, any calculation done from that</p> <p>25 point in time I do not believe should have</p>	<p>1 D. McIsaac</p> <p>2 included that asset as a debit in the formula.</p> <p>3 Q. Can you show me where in the either</p> <p>4 FINRA or SEC Rule 15c3-3 it requires an</p> <p>5 adjustment prior to the delivery of the assets</p> <p>6 to another party.</p> <p>7 A. I don't believe there's anything in</p> <p>8 3-3 that talks to this. This is my opinion that</p> <p>9 if you put a debit in the formula, it needs to</p> <p>10 be realizable. It has to be secured. The</p> <p>11 security for this would be that it's at the OCC</p> <p>12 and they will return it to you when not needed.</p> <p>13 Q. Okay. So you do not believe there's</p> <p>14 anything in 3-3 that would require that?</p> <p>15 A. I don't think there's anything in 3-3</p> <p>16 that talks to an OCC deposit being sold</p> <p>17 during -- prior to a calculation being finalized</p> <p>18 and how it should be accounted for in the</p> <p>19 formula.</p> <p>20 Q. Okay. Is there anything in the FINRA</p> <p>21 interpretations of 3-3 that would cover this</p> <p>22 issue?</p> <p>23 A. There's nothing that will cover this</p> <p>24 issue. There are -- there are issues within 3-3</p> <p>25 and I will gladly dig them out eventually, we</p>
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<p>1 D. McIsaac</p> <p>2 don't have time now, to show you that debits</p> <p>3 have to be secured. I can't put a debit in for</p> <p>4 a stock borrow if it's not secured. I can't put</p> <p>5 any amount in that's not secured.</p> <p>6 Q. Have you heard of a Transfer and</p> <p>7 Assumption Agreement, TAA?</p> <p>8 A. Yes.</p> <p>9 Q. Let me go back. Until such time as</p> <p>10 the account would have actually been transferred</p> <p>11 to Barclays, wouldn't OCC still owe margin to</p> <p>12 LBIE -- to LBI? My apologies.</p> <p>13 A. LBI would have been the -- the</p> <p>14 clearing firm at the OCC. If at any point in</p> <p>15 time I've given up my rights to that, all I'm</p> <p>16 saying is I don't think it's a good debit in the</p> <p>17 formula. Whether or not OCC would give it back</p> <p>18 to us or not, or give it back to LBI or not, at</p> <p>19 any point in time when that sale was</p> <p>20 consummated, they wouldn't get it back.</p> <p>21 So putting a debit in the formula,</p> <p>22 knowing that you cannot collect it, I think is</p> <p>23 not in compliance with the rules.</p> <p>24 Q. And yet you acknowledge that LBI could</p> <p>25 have withdrawn that money after the 17th from</p>	<p>1 D. McIsaac</p> <p>2 the OCC account?</p> <p>3 A. I --</p> <p>4 MR. OXFORD: Objection. Form.</p> <p>5 A. Yes, I acknowledge they could have</p> <p>6 done that.</p> <p>7 Q. Then how is that money less secured?</p> <p>8 A. Because as of the 19th -- you have one</p> <p>9 agreement that you're telling me that they --</p> <p>10 that they get the margin, and all I'm saying is</p> <p>11 if Barclays believes that that agreement means</p> <p>12 that they get the margin and the judge says,</p> <p>13 yes, that was a binding agreement at that point</p> <p>14 in time and they get the margin, all I'm saying</p> <p>15 is that then that debit was impeded and I can't</p> <p>16 believe that you would put a debit in the</p> <p>17 formula that is impeded. And that's all. If</p> <p>18 you don't have -- if you cannot have the right</p> <p>19 to collect it, you shouldn't put the debit in</p> <p>20 there.</p> <p>21 Q. I believe I had asked if you were</p> <p>22 familiar, if you had heard of the TAA?</p> <p>23 A. Yes.</p> <p>24 Q. Okay. Now, were you shown that</p> <p>25 earlier today?</p>

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<p>1 D. McIsaac</p> <p>2 A. Yes, I was.</p> <p>3 Q. Do you recall whether or not that</p> <p>4 agreement was signed before or after September</p> <p>5 19?</p> <p>6 A. I believe it was signed on -- either</p> <p>7 by some people on the 20th and some people</p> <p>8 possibly on the 22nd.</p> <p>9 Q. If the court were to hold that it was</p> <p>10 the TAA -- if the court were to hold that it was</p> <p>11 the TAA that effected Barclays' right to the</p> <p>12 margin deposits, would it still be your opinion</p> <p>13 that the calculation as of the 19th should have</p> <p>14 been adjusted?</p> <p>15 MR. OXFORD: Object to the form.</p> <p>16 Assumes facts not in evidence.</p> <p>17 MS. NEUHARDT: I believe as an expert</p> <p>18 I'm entitled to ask him hypotheticals.</p> <p>19 THE WITNESS: Is it okay to answer?</p> <p>20 MR. OXFORD: You can answer.</p> <p>21 A. I understand it might not have been</p> <p>22 signed at a point in time. I believe the OCC</p> <p>23 was looking for it to be signed as of the 19th.</p> <p>24 There was all kinds of e-mails that I was shown</p> <p>25 before stating that they were looking for it to</p>	<p>1 D. McIsaac</p> <p>2 be signed to transfer it over effectively on the</p> <p>3 morning of the 22nd to Barclays.</p> <p>4 Again, that TAA is not a contract.</p> <p>5 That TAA I believe is an agreement between</p> <p>6 Barclays, Lehman, and the OCC to transfer</p> <p>7 Lehman's contract and in the Lehman name to</p> <p>8 Barclays. It's not the sale agreement for</p> <p>9 determining when that agreement was done or</p> <p>10 signed. It's a vehicle used to transfer -- for</p> <p>11 the OCC to transfer the account name from Lehman</p> <p>12 to Barclays.</p> <p>13 Q. That entire answer was nonresponsive.</p> <p>14 I move to strike it.</p> <p>15 Please answer my question, which is</p> <p>16 that if the court were to hold that it was the</p> <p>17 TAA that effected Barclays' right to the margin</p> <p>18 deposits, would it still be your opinion that</p> <p>19 the calculation as of the 19th should have been</p> <p>20 adjusted?</p> <p>21 A. I would have to determine or review</p> <p>22 what the court's reasoning why the TAA was the,</p> <p>23 in fact, the agreement between LBI and Barclays</p> <p>24 that sold that asset. Just -- I don't -- it's a</p> <p>25 hypothetical and I don't know. I don't consider</p>
Page 324	Page 325
<p>1 D. McIsaac</p> <p>2 that a sale agreement.</p> <p>3 Q. If the court held that that was the</p> <p>4 agreement that impaired the asset, and it was</p> <p>5 not signed until the 20th or perhaps the 22nd,</p> <p>6 would it change your opinion that the</p> <p>7 calculation --</p> <p>8 A. No, it would not.</p> <p>9 Q. Let me finish my question.</p> <p>10 -- that the calculation as of the 19th</p> <p>11 should have been adjusted?</p> <p>12 A. No, it would not.</p> <p>13 Q. And why?</p> <p>14 A. Because it was negotiated, started</p> <p>15 negotiating it on the 19th, and I don't think</p> <p>16 you should put an asset -- a debit in the</p> <p>17 formula that you have impeded, whether or not</p> <p>18 you do it on Saturday or Sunday.</p> <p>19 Q. So it is your testimony that the mere</p> <p>20 start of negotiations impairs the asset?</p> <p>21 A. That it is impaired because prior to</p> <p>22 the next business day, I don't have that, I'm</p> <p>23 not allowed to have that asset anymore.</p> <p>24 Q. Because you started the negotiations?</p> <p>25 A. Because it was finalized by the next</p>	<p>1 D. McIsaac</p> <p>2 business day, by the morning of the next</p> <p>3 business day, which effectively, to me, it was</p> <p>4 done as of the close of business the 19th.</p> <p>5 Q. So you're saying that even though --</p> <p>6 even if an agreement is reached after the close</p> <p>7 of business, it would affect the calculation of</p> <p>8 that day rather than the calculation of the next</p> <p>9 business day?</p> <p>10 MR. OXFORD: Objection. Form.</p> <p>11 A. I believe that if you've sold the</p> <p>12 asset prior to you needing to make your lockup,</p> <p>13 the requirement, and you have impeded that asset</p> <p>14 in any way, shape or form, that you should not</p> <p>15 include it in the formula.</p> <p>16 If that asset -- if that agreement, if</p> <p>17 the court finds that that agreement is what sold</p> <p>18 the asset and that was signed as of the 21st or</p> <p>19 22nd, it was signed before the opening of</p> <p>20 business the next day, so as effectively on the</p> <p>21 19th they would not have had a receivable.</p> <p>22 Q. Well, perhaps I misunderstand your</p> <p>23 earlier testimony, but I thought you said that</p> <p>24 the calculation would be done on Friday, the</p> <p>25 19th, and in the ordinary course of business,</p>

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<p>1 D. McIsaac</p> <p>2 this would be done every Friday?</p> <p>3 A. Uh-huh.</p> <p>4 Q. So how would an event that happened</p> <p>5 after the calculation have to be retroactively</p> <p>6 included in the prior calculation?</p> <p>7 A. Because I'm only saying -- because</p> <p>8 it's being done and agreed to prior to the time</p> <p>9 that the calculation is finalized that it should</p> <p>10 be -- should be reviewed in that respect.</p> <p>11 Q. What portion of SEC Rule 15c3-3 are</p> <p>12 you relying on for that opinion?</p> <p>13 A. SEC Rule 3-3 talks about secured</p> <p>14 assets, and you cannot put a customer debit in</p> <p>15 the formula unless it's fully secured.</p> <p>16 Q. I just want to make very clear that it</p> <p>17 is your position that a contract that was only</p> <p>18 being negotiated prior to the close of business</p> <p>19 on Friday, nonetheless if it reached agreement</p> <p>20 prior to the opening of business the next</p> <p>21 business day, it should -- it would result in a</p> <p>22 retroactive recalculation of the requirement --</p> <p>23 of the calculation done on Friday?</p> <p>24 MR. OXFORD: Is that -- that's a</p> <p>25 statement, Amy. Do you have a question?</p>	<p>1 D. McIsaac</p> <p>2 Q. Sorry. I did put the "it" before the</p> <p>3 "is."</p> <p>4 Is it your position that a contract</p> <p>5 that is only being negotiated prior to the close</p> <p>6 of business on Friday but that is closed prior</p> <p>7 to the opening of business on Monday would</p> <p>8 require a retroactive recalculation of the</p> <p>9 calculation done Friday?</p> <p>10 A. My opinion is that I don't believe the</p> <p>11 TAA is -- is the contract.</p> <p>12 Q. I'm not asking you whether or not the</p> <p>13 TAA is the contract. I'm asking you whether or</p> <p>14 not --</p> <p>15 A. I'm trying to finish my thought.</p> <p>16 MR. OXFORD: Amy, we're all trying to</p> <p>17 get out of here. If you could let Mr.</p> <p>18 McIsaac finish his answer --</p> <p>19 MS. NEUHARDT: I'm going to ask it</p> <p>20 again because he's clearly not answering the</p> <p>21 question.</p> <p>22 MR. OXFORD: Well, it's very hard for</p> <p>23 you to reach that conclusion if you don't</p> <p>24 let him finish his answer.</p> <p>25 Q. But if you're going to tell me that</p>
Page 328	Page 329
<p>1 D. McIsaac</p> <p>2 the TAA is not the contract, I'll ask it again.</p> <p>3 A. I believe that the TAA impedes the</p> <p>4 asset as of the 19th.</p> <p>5 Q. Please show me what portion of 15c3-3</p> <p>6 justifies that conclusion.</p> <p>7 A. I -- I don't believe you'll find</p> <p>8 anything in 3-3 that will say that, but I</p> <p>9 believe that the asset is impeded as of the 19th</p> <p>10 if you have agreed to sell it and not receive</p> <p>11 any money back in return for it that you can put</p> <p>12 into the customer debit, and that's all I'm</p> <p>13 saying.</p> <p>14 Q. Is there anything in FINRA that</p> <p>15 supports that?</p> <p>16 A. I don't believe there's anything other</p> <p>17 than talking about secured assets.</p> <p>18 Q. Let's move on to what was in your</p> <p>19 original affidavit as paragraphs 46 to 49 and</p> <p>20 you refer to as customer property seizure during</p> <p>21 the transfer process.</p> <p>22 A. Uh-huh.</p> <p>23 Q. Now, as I understand your opinion in</p> <p>24 your original affidavit, your basis for</p> <p>25 identifying this 82 million was that LBI's RISC</p>	<p>1 D. McIsaac</p> <p>2 system did not feed into LBI's Rule 15c3-3</p> <p>3 calculation; is that correct? And I'm looking</p> <p>4 at paragraph 47.</p> <p>5 MR. OXFORD: Object to the form.</p> <p>6 A. Yes, I think I say here that the RISC</p> <p>7 system doesn't automatically feed the 3-3</p> <p>8 calculation.</p> <p>9 Q. Have you since learned that that is</p> <p>10 incorrect?</p> <p>11 A. No, I've been told and informed that</p> <p>12 the RISC system is reviewed by personnel who</p> <p>13 supply the preparers the debit and credit</p> <p>14 balances for customer accounts to be included in</p> <p>15 the formula.</p> <p>16 Q. Who did you speak to that informed you</p> <p>17 of that?</p> <p>18 A. The Trustee's financial advisors.</p> <p>19 Q. Is that Deloitte?</p> <p>20 A. Yes, it is.</p> <p>21 Q. Did you speak to anyone who had been</p> <p>22 an LBI employee to confirm that to be true?</p> <p>23 A. No, I have not.</p> <p>24 Q. Did you ever speak to Peter Tennyson?</p> <p>25 A. No.</p>

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<p>1 D. McIsaac</p> <p>2 Q. While she gets this document, in your</p> <p>3 rebuttal affidavit, paragraphs 22 to 23, you</p> <p>4 discuss the same issue. You do not mention the</p> <p>5 RISC system as a basis for your report in the</p> <p>6 rebuttal affidavit.</p> <p>7 A. Uh-huh.</p> <p>8 Q. Why is that?</p> <p>9 A. I think we tried to further clarify</p> <p>10 that these were moneys that were -- the accounts</p> <p>11 were debited as if the customers were paid. The</p> <p>12 customers were never paid, so an adjustment had</p> <p>13 to be made to -- to, in the normal course of</p> <p>14 business, you reconcile your bank accounts, you</p> <p>15 look at items that you thought were paid that</p> <p>16 weren't paid, and you would make the adjustments</p> <p>17 for those.</p> <p>18 These moneys were never paid to the</p> <p>19 customers so you effectively still have a</p> <p>20 payable to the customer.</p> <p>21 Q. Okay. And now, what is your basis for</p> <p>22 saying these moneys were never paid to the --</p> <p>23 paid to the customers?</p> <p>24 A. What I have seen is that the debits,</p> <p>25 they debited their accounts, and there was no</p>	<p>1 D. McIsaac</p> <p>2 adjustment coming from the RISC system that I</p> <p>3 was shown adjusting for this \$82 million.</p> <p>4 Q. Do you have any other basis for saying</p> <p>5 the moneys were never paid out?</p> <p>6 A. No, that is it. I think the customers</p> <p>7 actually made claims, possibly to the estate,</p> <p>8 that they weren't paid their moneys.</p> <p>9 Q. If it turns out that the RISC system</p> <p>10 did in fact feed into the 15c3-3 calculation,</p> <p>11 would that change your opinion in any way?</p> <p>12 A. Not if these amounts were not included</p> <p>13 as payables to the customers at that point in</p> <p>14 time.</p> <p>15 Q. Did you do any investigation of</p> <p>16 whether or not items within the RISC system</p> <p>17 would or would not have been fed into the 15c3-3</p> <p>18 calculation?</p> <p>19 A. I was informed that the debits and</p> <p>20 credits to be included in the reserve formula</p> <p>21 off of the RISC system were provided by</p> <p>22 personnel responsible for the RISC system</p> <p>23 independent of anything else.</p> <p>24 Q. Okay.</p> <p>25 A. They provided the adjustments to the</p>
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<p>1 D. McIsaac</p> <p>2 formula for that day.</p> <p>3 Q. And this was Deloitte that informed</p> <p>4 you of that?</p> <p>5 A. Yes.</p> <p>6 Q. We may have to come back to that when</p> <p>7 she comes back.</p> <p>8 Okay. Now, your original affidavit</p> <p>9 discusses a proposed adjustment of 2.3 billion</p> <p>10 allegedly owed to LBIE's customers, correct?</p> <p>11 A. Uh-huh.</p> <p>12 Q. You do not discuss that in your</p> <p>13 rebuttal report, correct?</p> <p>14 A. That's correct.</p> <p>15 Q. Okay. Why is that?</p> <p>16 A. I believe the Trustee's advisor -- the</p> <p>17 Trustee has removed that and put that as under</p> <p>18 investigation until such time as it can be</p> <p>19 concluded whether or not it is a viable</p> <p>20 liability to the customers.</p> <p>21 Q. Okay. Do you continue to have an</p> <p>22 opinion on whether or not the adjustment is</p> <p>23 necessary?</p> <p>24 A. If it's determined that there is a</p> <p>25 liability to the omnibus customer account, yes,</p>	<p>1 D. McIsaac</p> <p>2 it should then go in the formula. It was in the</p> <p>3 records at that point in time as a payable and</p> <p>4 was removed from the formula.</p> <p>5 Q. Okay. But you do not know as of today</p> <p>6 whether or not there was in fact a liability to</p> <p>7 the omnibus customer account?</p> <p>8 A. No, that's why it's still under</p> <p>9 investigation.</p> <p>10 Q. Did you believe that it was not still</p> <p>11 under investigation at the time of your October</p> <p>12 5 affidavit?</p> <p>13 A. I believe we -- I'll have to look at</p> <p>14 my affidavit, but I believe we sort of alluded</p> <p>15 to the fact that it's still being investigated,</p> <p>16 and if such time it was found not to be true, we</p> <p>17 wouldn't require it, but I'll have to look.</p> <p>18 If you look at item -- at paragraph</p> <p>19 44, I basically say I was not able to see any</p> <p>20 documents to make this adjustment, and until</p> <p>21 such time as we saw it, that it should be held</p> <p>22 until we can determine if it should actually be</p> <p>23 owed.</p> <p>24 Q. Well, your October 5 report appears to</p> <p>25 be divided into, starting on page 13, items --</p>

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1 D. McIsaac
 2 you phrase it as items omitted or incorrectly
 3 reported in the reserve formula, and that goes
 4 through the top of page 19, and then on 19,
 5 number 2, is items currently under
 6 investigation, and then you list a number of
 7 other items?
 8 A. Uh-huh.
 9 Q. Why did you put the 2.3 billion in
 10 your first category of items discussed in your
 11 original affidavit as opposed to the category of
 12 items under investigation?
 13 A. Because at this point in time we had
 14 shown -- been shown no documents that would
 15 prove that this credit should be -- should come
 16 out. Subsequent to that, I believe the Trustee
 17 has had some discussions with people and have
 18 decided to remove it until such time as I've
 19 seen those documents. I'm just not putting it
 20 in my affidavit until I can see something that
 21 proves it or that the claim is -- the claim as I
 22 believe is still out there from LBIE and until
 23 such time as it can be proven incorrect.
 24 Q. So in October when you did your
 25 initial affidavit, you assumed as true what the

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1 D. McIsaac
 2 to 9/19?
 3 A. We saw no proof that that
 4 adjustment -- there was no proof behind that
 5 adjustment that we could see at that point in
 6 time that I was shown or could be found
 7 supporting taking the credit out of the formula.
 8 Q. Did you investigate whether or not the
 9 obligation to the customer was satisfied prior
 10 to 9/19?
 11 A. I don't -- the customer is LBIE.
 12 Q. The underlying customer?
 13 A. The underlying customer is LBIE's
 14 responsibility. I don't think it's LBI's
 15 responsibility.
 16 Q. So is your answer no?
 17 A. No.
 18 Q. Have you conducted any further
 19 analysis on this issue since the time of your
 20 October 5 affidavit?
 21 A. No.
 22 Q. Now, we referred, actually, to Section
 23 2 of your original affidavit as items currently
 24 under investigation?
 25 A. Uh-huh.

1 D. McIsaac
 2 Trustee gave you?
 3 A. I saw the -- the credit coming out of
 4 the formula, an adjustment to the formula for
 5 the \$2.3 billion. There was no support for that
 6 credit coming out of the formula.
 7 Subsequent to that, I believe the
 8 Trustee and his advisors may have additional
 9 information that they are investigating and they
 10 decided to take it out of their motion.
 11 Q. In October did you investigate whether
 12 or not the amount at issue was related to an
 13 LBIE customer account or proprietary account?
 14 A. It was sitting in the LBIE omnibus
 15 customer account as a payable.
 16 Q. If it was in the customer account, did
 17 you investigate whether or not the obligation of
 18 the customer had been satisfied prior to LBIE
 19 filing for administration?
 20 A. There was an -- I don't know if that
 21 has anything to do with it. What does LBIE --
 22 this is owed to LBIE for its customers.
 23 Q. All right. Then if it was a customer
 24 account, did you investigate whether or not the
 25 obligation to the customer was satisfied prior

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1 D. McIsaac
 2 Q. The first one you identify on page 19
 3 starting with paragraph 51 is a Chase Bank
 4 overdraft. Have you done any further
 5 investigation on this matter since your October
 6 5 report?
 7 A. No.
 8 Q. Have you done any further
 9 investigation on any of the other --
 10 A. No.
 11 Q. -- issues identified?
 12 A. No.
 13 Q. Do you know of any SEC regulation that
 14 would prevent Lehman Brothers Holding Company
 15 from paying an amount to Barclays that was equal
 16 to the amount held in the reserve account?
 17 MR. OXFORD: Objection. Vague.
 18 A. I -- I am not fluent in all SEC rules
 19 as they affect holding companies.
 20 Q. Okay. Have you done any investigation
 21 as to the propriety of the amount of customer
 22 claims that have been filed against the estate?
 23 A. No, I have not reviewed the customer
 24 claim process.
 25 Q. So you have no opinion on how much the

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1 D. McIsaac
 2 estate will eventually have to pay out?
 3 A. No, I have not seen that number at
 4 this point in time.
 5 MS. NEUHARDT: Okay. Let's take a
 6 five-minute break. I may be through.
 7 THE VIDEOGRAPHER: The time is 7:09.
 8 We are going off the record.
 9 (Recess.)
 10 THE VIDEOGRAPHER: The time is 7:19.
 11 We're back on the record.
 12 BY MS. NEUHARDT:
 13 Q. Mr. McIsaac, right before we broke,
 14 you informed me that you have not conducted any
 15 further investigation relating to the items
 16 listed in Section 2 of your original affidavit
 17 as items currently under investigation?
 18 A. That's correct.
 19 Q. Have you been informed of any progress
 20 or findings of the financial advisors relating
 21 to those items under consideration?
 22 A. I believe in my rebuttal report I make
 23 a statement to the fact that they have to date
 24 have found nothing else that would impact the
 25 formula.

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1 D. McIsaac
 2 they would not be in violation as of that
 3 Friday?
 4 A. Correct.
 5 Q. Okay.
 6 MS. NEUHARDT: I have no further
 7 questions. None from anybody else?
 8 THE VIDEOGRAPHER: The time is 7:20.
 9 This is the end of today's deposition.
 10 We're going off the record.
 11 oOo

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 22
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 25

 DANIEL McISAAC

Subscribed and sworn to
 before me this day
 of 2010.

1 D. McIsaac
 2 Q. And do you know -- did they inform you
 3 whether or not they have completed their
 4 investigation as to any of those matters?
 5 A. I don't believe they have finished it.
 6 Q. Okay. And we discussed earlier that
 7 if a calculation is done on a Friday in the
 8 ordinary course of business and an additional
 9 deposit is required, that deposit would be done
 10 the following Tuesday at 10 A.M.; is that
 11 correct?
 12 A. By the following Tuesday at 10 A.M.
 13 Q. No later?
 14 A. Yes.
 15 Q. Okay. In that situation, is a
 16 broker-dealer in violation of SEC rules at any
 17 time prior to 10 A.M. on the following Tuesday?
 18 A. In violation of SEC rules regarding
 19 what? They could be --
 20 Q. Are they in violation of any aspect of
 21 SEC Rule 15c3-3?
 22 A. As it pertains to that deposit, no.
 23 There could be other reasons that they're in
 24 violation of rules.
 25 Q. But as it pertains to that deposit,

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 2 CERTIFICATE
 3 STATE OF NEW YORK)

: ss

4 COUNTY OF NEW YORK)

5 I, Kathy S. Klepfer, a Registered
 6 Merit Reporter and Notary Public within and
 7 for the State of New York, do hereby
 8 certify:

9 That DANIEL McISAAC, the witness whose
 10 deposition is herein before set forth, was
 11 duly sworn by me and that such deposition is
 12 a true record of the testimony given by such
 13 witness.

14 I further certify that I am not
 15 related to any of the parties to this action
 16 by blood or marriage and that I am in no way
 17 interested in the outcome of this matter.

18 I further certify that neither the
 19 deponent nor a party requested a review of
 20 the transcript pursuant to Federal Rule of
 21 Civil Procedure 30(e) before the deposition
 22 was completed.

23 In witness whereof, I have hereunto
 24 set my hand this 7th day of April, 2010.
 25 -----

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